

Department of Toxic Substances Control

Brownfields Cleanup Revolving Loan Fund (BCRLF)

**IMPLEMENTATION PLAN/  
LOAN POLICIES AND PROCEDURES MANUAL**

April 3, 2008

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## **DISCLAIMER**

**This manual sets out the policies and procedures for use by the CURB Coalition RLF Program Loan Committee. The manual reflects current practices and requirements and may be amended periodically.**

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**For further information on the program or the information in this manual, please contact DTSC or SAFE-BIDCO at:**

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## **Purpose of the Brownfields Cleanup Revolving Loan Fund Program**

The United States Environmental Protection Agency's (USEPA) Brownfields Economic Redevelopment Initiative is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent access, safely clean up, and promote sustainable reuse of Brownfields. As part of this initiative, USEPA has awarded cooperative agreements to capitalize Brownfields Cleanup Revolving Loan Fund Pilots.

The three-million dollar Department of Toxic Substances Control (DTSC) Brownfield Cleanup Revolving Loan Fund Program establishes a revolving loan fund that provides loans to help developers, businesses, schools, and local governments clean up and redevelop Brownfields and underutilized properties. This Program was developed by DTSC working with the Redevelopment Agency of the City and County of San Francisco, and the City of Los Angeles to form California's Urban and Rural Brownfields (CURB) Coalition in cooperation with USEPA. The CURB Coalition has joined together to become the CURB Coalition Brownfield Cleanup Revolving Loan Fund (CCRLF), with the goal to assist in providing low interest loans for the cleanup of Brownfield sites in California.

## **Background**

There are possibly hundreds of urban and rural Brownfields and underutilized properties throughout California where redevelopment has been stymied due to real or perceived hazardous material contamination. One of the primary reasons that these properties are not redeveloped for beneficial use is that potential redevelopers are hesitant to expend funds to determine whether a Property is contaminated, and if so, how much it would cost to remediate the site. Some potential redevelopers are also not able to secure conventional financing to remediate contaminated properties.

This has resulted in a multitude of problems, including urban sprawl, decaying inner-area neighborhoods and schools, public health and environmental risks stemming from contaminated properties, reduced inner-area tax bases, and an increased need for major infrastructure improvements, such as streets, highways, and sewer systems, to service the urban fringe areas while the inner-area infrastructure deteriorates. DTSC's Site Mitigation and Brownfields Reuse Program currently oversees approximately 1,002 hazardous substances release site investigations and cleanups, and monitors long-term operations and maintenance activities at approximately 191 sites where the cleanup process has been completed. Additionally, DTSC is responsible for ensuring compliance with the terms of the 387 land use restrictions now in place on properties throughout the state. These sites and projects include the cleanup of federal and state superfund properties, abandoned mines, and other abandoned and underutilized properties known as "Brownfields," and open and closed military installations. Additionally, the program is responsible for ensuring that new public schools are not constructed on properties contaminated with hazardous materials. The program also is responsible for the Stringfellow Hazardous Waste Site,

a former hazardous waste disposal site and federal Superfund site. This program also continues to work closely with other state agencies, USEPA, and local agencies throughout the state to establish and implement viable grant and loan programs to aid in assessment and cleanup of Brownfields sites.

**San Francisco Redevelopment Agency:** A key strategy for the economic revitalization of the Bayview Hunters Point Redevelopment Project Area is the remediation of Brownfields, or sites that were historically used for commercial or industrial purposes but are currently vacant or underutilized due to real or perceived environmental contamination. The redevelopment of Brownfields can profoundly affect communities by improving environmental quality and public health, stimulating economic growth, and enhancing visual appeal of a community.

**City of Los Angeles:** The City of Los Angeles will market the CCRLF Program to its businesses and residents and will be made a regular agenda item for the City's Brownfields Resources Team which interfaces with most Brownfields efforts in the City. Additionally, the CCRLF Program information will be provided to each of the City's 15 council offices. Council offices will be solicited to determine if they know of any eligible projects and will be asked to distribute the information to potentially interested persons. The CCRLF program information will also be disseminated by the Mayor's Business Team and the Community Development department to the economic development community through various forums and meetings.

**Throughout California:** The CCRLF will provide incentives for the reuse of Brownfield sites and will be a powerful tool for municipalities within California to strengthen their local economies. By encouraging stakeholders to take an active part in the redevelopment of idle properties and by attracting new interests to local commerce and tourism, the CCRLF can help to shape and expand economic diversification.

The CCRLF Program loans may be used for the purpose of performing actions necessary to respond to the release or threatened release of a hazardous material including, but not limited to, demolition and or preparation for site cleanup activities, site remediation, public participation related to cleanup activities, and other clean up activities on an eligible property. A loan cannot be used for activities deemed "operation and/or maintenance."

The CCRLF Partners maintain the sole responsibility for program marketing for their identified geographic areas.

A list of Acronyms/Definitions is provided as Appendix A of this manual.

### **Loan Application Process**

A loan application package for CCRLF loans has been developed. Applications are accepted on a continuous basis and may be submitted via e-mail to any of the CURB Partners (Appendix B contains CURB Partner contact information). CURB Partners will assist an applicant in completing the application package and reviewing the package for

accuracy and completeness if requested. The loan application process has been broken down into two steps: a determination of project eligibility including adequate site assessment/remedy selection information, followed by an evaluation of financial factors. Initially, an applicant must submit only the site eligibility (including assessment and remedy selection documentation) information as outlined in the first pages of the application (refer to the Application Checklist at the beginning of the application package to ensure that all necessary information is included). A single signed copy of the information should be either e-mailed, hand-delivered, or mailed to the RLF Grant Manager and/or CURB Partner (addresses provided in the application). (If the application information is sent electronically, the original, signed hard copy should be sent to the RLF Grant Manager, Site Mitigation and Brownfields Reuse Program, 1001 I Street, P.O. Box 806, Sacramento, California 94812.) Once the application is delivered to SAFE-BIDCO, direct contact with the applicant is authorized.

The applicable CURB Partner will evaluate the information to determine whether the site and applicant meet all the eligibility requirements and are not subject to any disqualifying factors. Additionally, the appropriate SCOD Representative and/or Site Manager will evaluate the assessment/remedy selection documentation submitted to determine if it is adequate to proceed with a cleanup action. After Loan Committee review of the site eligibility information and verification that the site assessment document is adequate, the RLF Grant Manager or CURB Partner will either (1) notify the applicant to submit the supporting financial documentation portion of the application, or (2) provide an explanation if it is determined that the project is ineligible for funding.

An original copy of the supporting financial documentation portion of the application and a check for \$500 must be submitted to SAFE-BIDCO to proceed with the application process. This information will need to be reviewed and summarized for subsequent review and approval by the Loan Committee Members, as outlined in the Loan Committee Manual and in latter sections of this manual. SAFE-BIDCO's preferred method of receiving information is electronically.

A fixed amount of financial assistance will be provided upon acceptance of an approved request to help offset costs of environmental cleanups on Brownfields properties. The recipient will receive payment of the full loan amount as soon as the agreement for financial assistance is signed, there is a signed CCRLF Cleanup/Oversight (Oversight) Agreement, and the loan funding is available. Conditions of financial assistance and of any repayment of such assistance must be set forth in the agreement for financial assistance between DTSC and the recipient and are subject to any requirements and limitations imposed by USEPA.

### **Applicant Matching Costs**

CCRLF has determined that in order to assist the program in being a thriving, viable program, applicants may be required to pay a portion of the required USEPA match. The percentage of match to be paid by the applicant varies based on the amount and



payback timeframe for the loan. The recipient will need to demonstrate through their project accounting that the agreed upon match requirement is being met.

### **Subgranting/Loan Discounting/Forgiveness**

USEPA program guidelines allow for 40% of funds to be granted. DTSC will accept subgrant applications at any time; however, subgrant requests may not be considered until a significant portion of grant funds have been loaned and/or until CURB Partners determine it is otherwise beneficial to the program. Requests for subgrants may be submitted to the RLF Grant Manager and/or any CURB Partner for discussion at a Loan Committee meeting. A portion of loan principal may be discounted, also known as "forgiving" a portion of loan principal, for non-profit organizations as defined at Section 4(6) of the Federal Financial Assistance and Management Improvement Act of 1999. The amount of principal discounted may be up to 30 percent of the total loan, provided that the total amount of the principal does not exceed \$200,000. Loan discounting/forgiveness is considered part of the total allowable 40% of funding that may be subgranted. Subgrantees may include states, political subdivisions, Indian tribes, U.S. territories, and non-profit organizations.

### **Property Owner**

An applicant for Brownfields loan funding submitting a CCRLF application (Appendix C) for property which he/she owns, must include the following supporting information:

- Description of the proposed site that demonstrates the Property is an eligible site including site property address, assessor parcel number(s) and a complete legal description of the site (include a 8 1/2" x 11" map of the site); if the proposed cleanup area is only a portion of a larger site, include engineered survey/maps for the area that is to be remediated with the requested loan funds;
- An appraisal of the Property with valuation subject to the completion of the necessary cleanup action;
- A copy of Phase I and Phase II Environmental Site Assessments or equivalent documents;
- Description of intended redevelopment of the project and its projected benefits, and information about the project coordinator--include information about potential jobs that will result from the proposed use, financial benefit to the community, etc.;
- Documentation of the current zoning and General Plan designation for the intended site and documentation that the planned future development of the Property is consistent with the current and reasonably foreseeable future land uses in the area;
- Description of the cleanup action to be performed on the Property; and if Property is part of a larger site, description of any cleanup action that is currently being performed or that will be performed on the larger site;
- Documentation of appropriate security interest in the Property, if appropriate, and identification of the source of loan repayment;

- If applicable--documentation that the owner of the Property agrees to use the Property as a security interest for the loan to secure financing necessary for the completion of the cleanup action;
- Information regarding the applicant's environmental compliance history, include a description of all past and current administrative orders, agreements, judicial orders, and consent decrees;
- Documentation of the total debt against the Property on which the remediation will be taken; and
- Documentation of applicant's credit-worthiness, including the applicant's credit history and a description of the applicant's bank relationship

### **Non-Property Owner**

If the applicant is not the Property owner, the applicant must have long-term site control and shall provide the following additional information:

- Documentation of the applicant's option to purchase the Property; or
- A copy of a long-term lease for the future; and
- Documentation that the property owner agrees to the applicant conducting cleanup activities on the Property.

### **Applications from Public Entities**

The CCRLF Program recognizes that there may be circumstances in which public agencies, that may or may not be administratively part of the same governmental unit, are interested in entering into a loan agreement to remediate a contaminated site. If the applicant is a public entity, the RLF Grant Manager must obtain the following information from the applicant:

- Documentation that the borrowing entity has the legal authority to enter into a legally binding obligation to repay. For example, a memorandum from an area or county's legal counsel citing the statutory authority or an area council resolution that obligates the repayment from a particular funding source. The obligation to repay must be more than a "moral" obligation to repay or a simple "promise" to do so.
- Document that there is an identifiable source of income/repayment. For example, PILOT (payment in lieu of taxes) funds, proceeds from a TIF (tax increment financing), or funding from the sale of the property.
- Documentation of an enforcement entity with the authority to ensure that the loan is repaid. For example, the comptroller's office of the government entity. This entity will help avoid potential conflicts of interest.

Whenever a governmental agency is applying for funding under the CCRLF Program, all eligibility requirements would apply. If necessary, the RLF Grant Manager will work with Legal Counsel and/or DTSC's Contracts Office to prepare a contract detailing the terms of the agreement. The terms of the lending agreement must be reviewed by

USEPA prior to loan closing. If the agency is an Indian tribe/colony or confederation, a BRLF contract will be prepared and reviewed.

### **All Appropriate Inquiries**

Borrowers may not use loan funds under USEPA's Brownfields Cleanup Revolving Loan Fund (BCRLF) Program for payment of cleanup costs at a site for which the borrower is potentially liable under CERCLA § 107. Therefore, it is important that all borrowers who are asserting a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO) limitation on liability must perform (or have already performed) "all appropriate inquiries" as specified in CERCLA §101(35)(B) and 40 CFR Part 312 on or before the date of acquiring the property. Details on documentation of "all appropriate inquiries" may be found by contacting the USEPA district office or on the USEPA website ([www.epa.gov/Brownfields](http://www.epa.gov/Brownfields)).

### **Ineligible Applicants**

The CURB Partners are responsible for determining eligibility of applicants requesting funding under this program. All applicants asserting a limitation on liability as an Innocent Landowner, Bona Fide Prospective Purchaser, or Contiguous Property Owner must demonstrate that on or before the date of acquiring the property, they carried out all appropriate inquiries that meet the USEPA definition in 40 CFR Part 312 to be considered eligible for loan funding. In addition, applicants may be ineligible because of other factors, including the following:

- A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials;
- A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering;
- A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site;
- A person subject to a pending investigation or ongoing enforcement action of the Federal Government pursuant to the Federal Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sec. 9601 et seq. or is subject to a pending investigation, litigation activities, or ongoing enforcement action by DTSC with respect to the Property;
- A person who is currently, or has previously been subject to any penalties resulting from environmental non-compliance at the site subject to the loan request;
- A person or entity who intends to use CCRLF funds to pay for response costs at a site for which they are potentially liable under §107 of CERCLA;

- A person or party that is currently, or has previously been a generator or transporter of contamination at the site subject to the loan request;
- A person that has been suspended, debarred, or otherwise declared ineligible for funding or grants under any federal government program;
- A person who knowingly made false statements regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to this program.
- A site owner currently engaged in litigation over activities related to contamination.

### **Eligible Activities**

CCRLF funds used in this program have been designated by USEPA for cleanup activities only. Cleanups will be conducted under established remediation programs operating within the State. Acceptable cleanup actions allowed by these programs involve removing, mitigating, or preventing the release (or the threat of a release) of a hazardous substance, pollutant, or contaminant. Examples of acceptable activities are:

- Fences, warning signs or other security or site control precautions;
- Drainage controls;
- Stabilization of berms, dikes or impoundments or drainage or closing lagoons;
- Capping of contaminated soils;
- Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- Excavation, consolidation, or removal of contaminated soils from drainage or other areas;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
- Containment, treatment, disposal or incineration of hazardous materials;
- Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and,
- Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

The loan funds may also be used for the purchase of Environmental Insurance (see restrictions in USEPA Administrative Manual, October 2004). CCRLF funds cannot be used for pre-cleanup environmental response activities, such as site assessment, identification, and characterization.

### **Ineligible Activities**

DTSC in cooperation with the CURB Partners are responsible for determining eligibility of costs allowed under this program. The following is a partial list of ineligible use of funds under this program:

- Pre-cleanup environmental response activities, such as site assessment, identification, and characterization (including preparation or approval of a PEA);
- Development activities that are not cleanup actions (e.g. construction of a new facility or marketing of a property);
- Recipients shall not use the funds received to pay for any of their administrative costs related to the management of a loan received from the fund, though those activities which are determined to be allowable costs may be used to meet the 20% match requirement outlined in the loan application process. DTSC, along with the applicable CURB Partner, will consider an administrative cost to be an allowable cost if it directly involves the design and monitoring of performance of a cleanup action;
- Monitoring and data collection necessary to apply for, or comply with, environmental permits under other Federal and State laws, unless such a permit is required as a component of the cleanup action;
- Payment of a penalty or fine; and
- Cleanup of a naturally occurring substance, products that are part of the structure and result in exposure in residential, commercial, or community facilities (e.g., interior lead-based paint contamination or asbestos which results in indoor exposure), or public/private drinking water supplies that have deteriorated through ordinary use--except as determined on a site-by-site basis and approved by USEPA Headquarters, consistent with CERCLA §104(a)(3) and (4).

### **Ineligible Properties**

CURB Coalition Partners along with the applicable SCOD Representative/Site Manager are responsible for determining eligibility of properties under this program. Properties must meet the definition of a Brownfield site; the site must contain a release of a hazardous substance or pollutant to be eligible for funding. The following is a partial list of property characteristics that are not eligible under this program:

- Property currently listed or proposed for listing on the National Priorities List;
- Properties where a Federal or State agency is planning or conducting a response or enforcement action;
- Properties currently owned by a party responsible for the environmental contamination of the site; and
- Properties at which a removal action must be taken within six (6) months (i.e. time critical removal action).

### **Federal/State/Local Government Agencies**

To determine if the loan applicant and/or site/project location is not currently in violation of USEPA regulations, the SCOD Representative or Site Manager will request information about the applicant/project site. The information received from the applicant will assist the SCOD Representative, Site Manager, and legal counsel (if applicable) in

determining if the applicant/project site is in compliance with current Federal and State Program regulations and statutes.

### **Scoring Criteria**

CCRLF Coalition Partners will establish written priority criteria for ranking loan applications received under this program.

If, at any time, CCRLF Coalition Partners determine that sufficient funding to meet the demand for loans will not be available, applications will be ranked in order of their ability to meet the CCRLF objectives according to the criteria.

### **Loan Application Review Process**

The main areas of review are Project Priority, Project Eligibility, and Loan Applicant Eligibility. The Loan Committee Members will evaluate each submission to determine Project Priority. The SCOD Representative and/or Site Manager will review the materials to determine Project Eligibility for the subject property. SAFE-BIDCO will evaluate Loan Applicant Eligibility using standard commercial industry practices and the CCRLF underwriting standards defined in this manual.

Upon receipt of a site application, Loan Committee Members, and applicable SCOD Representative or Site Manager will review the application to determine whether the application is complete and eligible under Program guidelines. After the initial determination, RLF Grant Manager will notify the applicant in writing by mail as to the status of the application. Financial information shall not be reviewed or held by CURB, instead transmitted directly to SAFE-BIDCO for processing.

If the application is determined to be incomplete, a "Needs or Deficiency Letter" will be sent to the applicant by mail by the RLF Grant Manager. The letter will provide the applicant with a list of items necessary to complete the application package and an appropriate time period (usually 10 business days) to provide all necessary information to evaluate and process the loan request. If the RLF Grant Manager does not receive a response, he/she will attempt reasonable follow-up with the applicant. If there is no response from the applicant, the loan application will be considered withdrawn by the applicant due to incomplete information and the applicant will be notified by letter that the application is considered to be withdrawn.

SAFE-BIDCO staff will place a rejected or withdrawn application and supporting documents in the application file and label the file accordingly with the applicant/company name and forward the file to the RLF Grant Manager for archiving. SAFE-BIDCO will not retain any information relating to rejected or withdrawn applications.

## **Credit File Maintenance**

Until loan closing, application files will be maintained in a minimum of two files. SAFE-BIDCO will maintain a loan credit file which will contain the original loan documentation and will be secured in a fireproof safe. The RLF Grant Manager will maintain a Master Project file containing the applicant eligibility records, administrative records of the loan, and site information. At loan closing, SAFE-BIDCO will seal and transfer the loan credit file to the RLF Grant Manager for confidential control and loan servicing activity.

## **Loan Credit File Contents**

- Promissory Note
- Loan Committee Presentation
- Loan Agreement/various loan documents
- Deed of Trust
- General Security Agreement and UCC-1 Filings
- Personal Guaranty (if applicable)
- Corporate Guaranty
- Subordination Agreement
- Life Insurance Policy and Assignment
- Hazard Insurance Policy and Assignment
- Corporate Resolution
- Security Agreement
- Inter-Creditor Agreements
- Appraisals
- Credit reports
- Borrower financial statements
- Loan History
- Delinquency notices
- Written communication from or to the borrower

## **Master Project File Contents**

- Fund Balance Report
- Undisbursed Commitments
- Opinion of Counsel
- USEPA reporting requirements
- Site remediation plan
- Eligibility documentation
- Miscellaneous information
- Community Involvement documentation

For loans/grants sponsored by DTSC, the complete site file, including the Administrative Record, will be maintained by the assigned Site Manager and retained in the appropriate field office.

## **Loan Processing (Complete Application Package)**

After the loan application package is reviewed for completeness and the project is determined to be eligible, SAFE-BIDCO will obtain additional information on the applicant or subject property as needed to complete the loan underwriting. These reports will be retained in the Loan Credit File. SAFE-BIDCO will complete a Cash Flow Analysis spreadsheet using the applicant's tax return information and other financial documents. The Cash Flow spreadsheet gives SAFE-BIDCO financial ratio information based on business and individual financial information. The reports are used to prepare

the credit memorandum, which is presented at Loan Committee meetings as part of the Loan Approval Memorandum.

SAFE-BIDCO will, as applicable, obtain the following reports as part of the credit analysis:

- Business Credit Report
- Personal Credit Report
- UCC Filings Searches
- Preliminary Title Report

### **Loan Application Analysis and Underwriting Guidelines/Process (Credit Memorandum)**

The Loan Approval Memorandum will combine the SCOD Representative/Site Manager analysis of the Property and an analysis of the financial condition of the applicant (Credit Memorandum) prepared by SAFE-BIDCO. The Credit Memorandum will review the applicant's financial information using the 5-C's of Credit, a cash flow analysis, and DTSC's underwriting guidelines.

In addition to the Five C's of Credit, commercial loan financing is underwritten on a case-by-case basis. Every loan application is unique and evaluated on its own merits, but there are five (5) common criteria that lenders look for in commercial loan packages that are listed below:

#### **Disclaimer:**

Internal lending/underwriting guidelines provide the basic underwriting parameters for loan evaluation. The applicability of individual guidelines is determined relative to the complete credit analysis, and individual guidelines may not be applicable in all cases.

1) Five C's listed below will be used by SAFE-BIDCO to evaluate applications and to complete the credit memorandum:

- *Character (1st source of repayment):* Character is defined as the complex mental and ethical traits marking and often individualizing a person, group, or nation, typically ranks first among the Five C's in determining creditworthiness. Character indicates the applicant's willingness to live up to their promise to repay the debt. The applicant's willingness to honor obligations reflects the value the applicant puts on their reputation, honesty, and integrity. In the unlikely event of default, the character of the applicant will determine what other resources the applicant shall use to repay the loan. Character can be evaluated using the following resources:
  - History of the business;
  - Work experience of the business owners and key management; and
  - Educational experience of the business owners and key management.



Credit reports reflect the applicant's past character to repay debts. Credit reports are required on all applicants and guarantors. A new start-up business or young guarantor may not have an established credit history, in which case a memo to the file will indicate this. If a credit report reflects derogatory information, a thorough explanation by the applicant will be necessary, will be retained in the file, and the issues disclosed in the credit memorandum to the Loan Committee.

- *Capacity (2nd source of repayment):* Capacity usually follows character as the second "C". Capacity is the ability of the applicant to operate the business successfully and generate the cash needed to repay obligations as they come due. Capacity is sufficient power, enough strength, and adequate resources to start, maintain, and expand operations as the firm passes through its lifecycle. Capacity is the availability of short-term funds from operations that are available to repay debts.

The applicant must demonstrate the ability to repay the loan and the Loan Committee must find that the Applicant is creditworthy and the source of repayment is appropriate for the requested loan amount. Cash Flow is determined by review of the application, the historical financial statements, tax returns, and projected financial statements, if obtained. If historical financial statements do not show sufficient Cash Flow to service existing debt obligations, then projected financial statements should be obtained by SAFE-BIDCO. The projections should include reasonable assumptions. Significant and/or adverse changes in the applicant's financial condition should be explained, especially when business revenues are declining or the business has not demonstrated a history of profitability.

- *Capital (3rd source of repayment):* Capital constitutes the applicant's other assets (e.g. savings accounts, equity in fixed assets) on which to rely if the primary source of income is interrupted or reduced. Principals of a business must invest funds to cover start-up costs, acquire earning assets, and provide working capital. Capital is needed to help the firm pass the break-even point into a profitable operation and satisfactory returns on equity. The net worth of a business represents the difference of assets less liability, representing the equity portion of the business. Thus, if Cash Flow from operations is insufficient to repay debts, the business could sell assets to reduce their liabilities. Capital is a long-term source of funds, such as equity in assets, which could be available to repay debts.
- *Collateral (4th source of repayment):* Collateral, the property offered by an applicant to protect the interest of the lender, is the final source of repayment and stands as the last protection against loan loss. Assets likely to retain their values in deteriorating business conditions make the most desirable collateral and applicants offer these assets to offset weaknesses in the firm's capital and

capacity. However, excellent collateral is not always enough to protect the lender against poor character.

When collateral is obtained to support the loan request, certain collateral may be devalued because collected, repossessed, foreclosed collateral sells for less than market value. The value may also be reduced if there is no ready market for the collateral. Collateral equity is a consideration. This gives the applicant a percentage of shared risk, and something to lose if the loan fails.

Loans should be secured by collateral, or by a dedicated or guaranteed revenue stream. When real estate is obtained as collateral, a Member Appraisal Institute (MAI) certified appraisal is the desired and higher qualified appraiser. An appraiser licensed by the State of California is acceptable. A title insurance policy on the subject property will be required. For non-residential Property, an environmental assessment report on the Property is required. This may be in the form of a Phase I or PEA, as applicable to the property. The applicant is to pay all out of pocket costs and fees for these reports no later than close of escrow.

Examples of potential security/collateral sources may include but are not limited to the following:

- Negotiable instruments, stocks, bonds, contract rights
  - Assigned leases
  - Titled and non-titled equipment, vehicles, boats
  - Assigned life insurance (term and whole life/permanent)
  - Personal guarantees, secured or unsecured
  - Deeds of Trust on residential or commercial real estate (other than the property being remediated)
  - Accounts receivable, inventory (business)
- 
- *Conditions (5th source of repayment):* Conditions connote the economic and environmental influences on the firm's financial condition and performance. Conditions are factors typically beyond the applicant's immediate and direct control. Regardless of who or what controls them, conditions must be considered in any credit decision. Examples are the economy, business climate, business environment, national outlook, and legal and regulatory situation.

Conditions include the regulatory requirement that the applicant has adequately demonstrated the appropriateness of the loan for use in the project.

- 2) **Acceptable Debt Coverage Ratio (DCR)** to service the debt is a key component in making an underwriting evaluation. The DCR is defined as the monthly debt compared to the net monthly income of the Property. Using a DCR of 1:1, a lender is saying that it is looking for a \$1.00 in net income for each \$1.00 mortgage

payment. Typically lenders will determine the DCR ratio based on monthly figures, the monthly mortgage payment compared to the monthly net income. The higher the DCR ratio used, the more conservative the lender. Anything less than a 1:1 ratio could result in a negative Cash Flow situation raising the risk of the loan request. The CCRLF Program will use the following guidelines for acceptable DCR:

- 3.5:1 adjusted Cash Flow coverage in the previous year with project capitalized on historical financial statements.
- Cash Flow trend should be positive.
- 1.50:1 projected Cash Flow (based on sound business projections with assumptions).

3) **Acceptable Debt to Worth (DTW) Ratio** divides Total Liabilities by Tangible Net Worth. This ratio expresses the relationship between capital contributed by creditors and that contributed by owners. The higher the ratio, the greater the risk. A lower ratio generally indicates greater long-term financial safety. The CCRLF Program will use the following guidelines for acceptable DTW:

- DTW (adjusted), no more than 3:1.
- DTW (adjusted) with project capitalized on proforma balance sheet, no more than 4:1 for established businesses and 1:1 for start-up business.

4) **Acceptable Cash Flow to service the debt.** SAFE-BIDCO will analyze the company's financial statements to determine adequate cash flow based on a historical and/or projected ratio analysis. This analysis may also include commentary on business management and industry environment analysis. SAFE-BIDCO will evaluate credit by looking at solvency and liquidity, leverage, coverage and asset management. In addition to the ratios presented in DCR and DTW ratios, SAFE-BIDCO may evaluate the following ratios as part of their due diligence of the credit facility.

- *Current Ratio (1.50:1.00)*: This ratio divides current assets by current liabilities. This ratio indicates the company's ability to service its current obligations. The higher the ratio, the greater the cushion between obligations and a company's ability to service the debt.
- *Quick Ratio (1.50:1.00)*: This ratio expresses the degree to which a company's current liabilities are covered by the most liquid current cash and equivalents plus net current accounts receivable. Any value less than 1:1 implies dependency on inventory or other current assets to liquidate short term debt.
- *Cash Flow/Current Portion Loan Term Debt (1.50:1.00)*: Since Cash Flow is the primary source of debt retirement; this ratio measures the company's ability to service the principal repayment of debt and is an indicator of additional debt capacity.

- *Days' Receivable (45-60 days):* This ratio expresses the average time in days that receivables are outstanding.
- *Days' Payable (55-65 days):* This ratio expresses the average time in days that trade debt is outstanding.
- *Days' Inventory (45-65 days):* This ratio expresses the average time in days that units are in a company's inventory.
- *Loan to Value Ratio (shall not exceed 70% - 75% of appraised value):* The Loan to Value ratio is defined as:  $LTV \text{ ratio} = \frac{\text{Total Loan Balances (1st lien + 2nd lien + 3rd lien)}}{\text{Fair Market Value of the Property}}$ . Loan to Value is the percentage calculation of the loan amount divided by purchase price. Properties purchased less than 12 months prior to application may be valued at the lesser of the original purchase price or the appraised value of the property.

5) **Credit Worthiness:** For all businesses, the personal credit of principals will be evaluated. A personal guarantor will be required from the owners and/or principals of the project who have 10% or more ownership to properly underwrite the loan request. For corporations, business performance and credit ratings will also be evaluated. Acceptable business and/or personal financial records for the applicant, guarantors and affiliated entities include:

- Business Financial Statements: Annual (last 3 years) for applicant, guarantors, and affiliated entities. The financial statements must include a balance sheet, income statement, Cash Flow statement, and aging of accounts receivable and accounts payable. Original signature(s) of the person(s) completing the statement must be provided.

**Loan Amount**

\$200,000 to \$500,000  
\$500,001 and above

**Financial Statement  
recommended for review**

Internal or External  
CPA compiled

The applicant may prepare Interim Financial Statements if properly formatted. The applicant must sign all Financial Statements.

6) **Project Risk:** Unforeseen circumstances can interfere with a project, causing delays in the assessment or remediation of a site, which could lead to a potential non-repayment of the obligation. Loans secured by real estate can be a higher risk to the lender if there are very large dollars attached to the project. There are many elements of intrinsic risk in evaluating real estate secured loans such as remediation

risk, market risk, management risk and environmental risk which may impact the repayment ability of the applicant.

- *Remediation Risk:* Can the remediation of the project site be completed according to plans and specifications? The lender has to determine if there are unforeseen circumstances that interfere with the project or, cause delays, that the contractor and the applicant can handle them. The lender also has to determine if the project has proper planning and management, so if the lender is left with a project that either cannot be completed at all or that, when completed with modifications or cost overruns, the project can still be liquidated with a minimal loss to DTSC.
- *Market Risk:* Can the income producing properties succeed in attracting sufficient tenants at adequate lease/rental income to sustain the project economically? The lender has to determine anytime that property is built with speculative space, if there is a risk that the revenue stream will be inadequate or that there will be a prolonged period until a full revenue stream is achieved.
- *Project Management Risk:* Unless the loan applicant actively manages and maintains a property, there is a risk the property could become less desirable and thus not as marketable. The lender has to determine if the property is of a lesser value because of this risk, which could affect the Cash Flow stream over time.
- *Environmental Risk:* Since statutes and regulations concerning liability for cleanup of contamination of soil, water, and air can have a significant financial impact on the property owner, SAFE-BIDCO must evaluate if, in the event a collateral position was taken in property that was later found to be contaminated, and the property was ever taken back through foreclosure, would the lender have the ability to remediate the site in a reasonable and efficient manner, and liquidate the asset in a short amount of time with a minimal loss.

### **Required Financial/Applicant Information**

The documentation listed below represents additional information that is needed to assist SAFE-BIDCO in evaluating the application. A checklist (which addresses information listed below) will be part of the loan application to assist the applicant in providing the additional information that will be needed to complete the financial analysis. Incomplete information may require additional needs/deficiency letters to complete loan underwriting. The additional information may include:

- *Tax Returns (Business):* Annual (last 3 years) federal tax returns for the applicant, guarantors, and affiliated entities.

- *Personal Financial Statement (Owner/Guarantor)*: Complete a personal financial statement, with original signature and date, for all person(s) owning 20 percent or more of a business, or any guarantors. **(Appendix D)**
- *Tax Returns (Individual)*: Annual (last 3 years) federal returns for all guarantors or persons owning 20 percent of the business. Tax returns need to include all applicable schedules (i.e., A, B, C, D, E, K-1's, etc.).
- *Business Plan*: Written Business Plan for the business and the proposed project. **(Appendix D)**
- *Business Financial Statements (Projections)*: Three-year financial projections for business (proforma income statements, balance sheets and cash flow statements) with written assumptions if three years of Business Financial Statements are not provided.
- *Articles of Incorporations, By-laws, and Partnership Agreements*: Copies of the articles of incorporation, by-laws, partnership agreements, shareholder or management agreements, limited liability agreements, and other corporate or partnership agreements affecting control or ownership of the entity. (Tables of Incorporation if an LLC exists.)
- *Business License and Fictitious Business Name Statement*: Copy of all current business licenses and fictitious name statements if the company is a "doing business as".
- *Living Trust*: Copy of the living trust for the applicant whose entity and/or personal assets are held in a living trust.
- *Business Debt Schedule*: Copy of schedule of debt of the business. **(Appendix D)**
- *Personal Credit Check Authorization*: Provides authorization to SAFE-BIDCO to check references of the individual signing the document. **(Appendix D)**

## **Periodic Financial Information Requirements**

Periodically, the RLF Grant Manager may require borrowers to provide Business Financial Statements, Federal Tax Returns (Business/Individual), and/or Personal Financial Statements (Owner/Guarantor).

## **Loan Underwriting Guidelines for Government or Public Entities**

Loans to government or public entities must be evaluated differently than non-government applicants.

Eligible applicants for the CCRLF Program for loans to government entities include:

- Cities
- Counties
- Area and County (Joint) entities
- Joint Powers Authority
- Redevelopment agencies

- Special districts of any type including school districts
- Other local or regional political subdivisions
- Another State or Program Lender division, bureau, office, board, commission or other agency of the foregoing
- Indian tribes, Colonies and Sovereign nations

Note: The USEPA BCRLF Administrative Manual, October 2004, states that "a cooperative agreement recipient [i.e. DTSC] may not lend to itself ...unless a state or local law establishes that the agency may borrow money from the political jurisdiction of the cooperative agreement recipient and raise funds to pay the loan back." The policy stated in the manual recognizes that there may be circumstances in which two public agencies, that are administratively part of the same governmental unit, may enter into a loan agreement. The USEPA BCRLF Administrative Manual sets out specific requirements that must be met in order to lend to a government entity, which are as follows:

- The borrowing entity has the legal authority to enter into a legally binding obligation to repay.
- The borrowing entity has an identifiable source of income/repayment.
- That there is an enforcement entity that can enforce loan repayment, so that a CCRLF loan is repaid. This entity will help avoid potential conflicts of interest.

All borrower eligibility requirements would still apply to a government entity applicant and the substantive terms of the project and agreements must be reviewed by USEPA. The government entity may submit annual financial statements, independent audits or other evidence of financial condition. In lieu of detailed financial records, the lender may evaluate the collateral and the project end use to determine repayment ability. Each government entity must submit the standard loan application.

### **Government/Public Entity Loans – Special Documentation Requirements**

The government/public entity must provide documentation that it has the authority to enter into a repayment agreement, that it has a source of funds to repay the loan, and that an enforcement entity exists to insure loan repayment. A government/public entity requesting assistance under this program must submit the following documents:

- **Legal Authority:** An opinion of legal counsel must determine that the borrowing entity has the legal authority to enter into a binding obligation to repay a revolving fund loan. For example, if the borrowing entity is a government entity then a Resolution made by an entity allowing entry into a binding obligation to repay the loan is needed. If a Resolution is used to evidence authorization for use of loan funds for an intra governmental loan and its repayment from identified funding sources, then a copy of the Resolution in lieu of a legal opinion should be provided. If an entity has the legal authority to enter into loans without Council approval, then a Resolution would not be necessary. This documentation should also identify by title (not name) the individual authorized

as the agent to conduct all negotiations, execute and submit all documents which may be necessary for the completion of the loan and remediation plan.

- **Identifiable Source for Repayment:** The borrowing entity must provide a letter or other written documentation which identifies the source of repayment for the loan. Examples of this are the proceeds from sale of the property after remediation is complete, in combination with proceeds from tax increment financing, or a guarantee backed by general revenue that becomes effective after a specified period of time, or a funding mechanism such as payment in lieu of taxes.
- **An Entity to Assure Repayment is made:** DTSC must provide written documentation to USEPA which describes how the repayment obligation under the loan will be monitored and enforced. The documentation should identify an office or department in the government entity that is separate from the RLF Grant Manager and the borrowing entity to oversee and assure that repayment of the loan obligation is enforced.
- **Acknowledgement of Program Requirements by Borrowing Entity:** Use of revolving loan funds must be in accordance with CERCLA, NCP, and other federal, state, and local requirements. DTSC and the borrowing entity must provide written documentation to USEPA acknowledging that all parties entering into the loan understand and plan to comply with the CCRLF Program requirements. This will be done by the applicant entering into a written loan agreement with DTSC and a written cleanup agreement with the applicable oversight agency. The documentation should clearly identify that the borrowing entity will comply with the following obligations:
  - The timely use of CCRLF funds to pay for cleanup costs
  - Compliance with competitive procurement requirements
  - Davis Bacon compliance
  - MBE / WBE
  - Other cross cutting requirements such as the Uniform Relocation Act
  - Descriptions of CERCLA and NCP requirements and limitations
  - Roles and responsibilities for carrying out CERCLA and NCP requirements

As part of the review process, the borrowing entity must submit copies of all agreements and Commitment Letters from all other parties that have a role in making the project successful. Examples are agreements with the landowner, construction contractors, and other parties involved in the project. This documentation should be submitted to the RLF Grant Manager.



## Property Analysis (Appraisal)

An appraisal is an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. The appraisal covers a variety of assignments, including valuation, consulting and review. Reporting formats include, but are not limited to self-contained Appraisal Reports, Summary Appraisal Reports and Restricted Appraisal Reports. SAFE-BIDCO will analyze the fair market value of the property, which is determined by an appraisal. An appraisal of real estate is the valuation of the rights of ownership. The appraiser does not create value; the appraiser interprets the market to arrive at a value estimate. As the appraiser compiles data pertinent to a report, consideration must be given to the site and amenities as well as the physical condition of the property. Special use property may require additional underwriting/review by SAFE-BIDCO. The age, appearance, local market, location, and accessibility are other factors considered in performing and reviewing an appraisal.

The three common appraisal approaches, all derived for the market are:

*Cost Approach:* This value is the cost to replace or reproduce the improvements as of the date of the appraisal, less the physical deterioration, the functional obsolescence and the economic obsolescence. The remainder is added to the land value.

*Direct Sales Comparison (Market) Approach:* This value makes use of other benchmark properties of similar size, quality and location that have been recently sold, pending sales and listings of similar properties in the area. A comparison is made to the property.

*Income Approach:* This value is of primary importance in ascertaining the value of income-producing properties and has little weight in residential type properties. This approach provides an objective estimate of what a prudent investor would pay, based upon the net income the Property produces. This approach anticipates future benefits to be derived from the ownership of the property to indicate the capital amount of the investment, which produces the net income.

SAFE-BIDCO will typically use the Direct Sales Comparison (Market) Approach or Income Approach when evaluating commercial real property.

- If the Direct Sales Comparison (Market) Approach is used by the appraiser, the following steps should be addressed in the appraisal process and reviewed by SAFE-BIDCO:
  1. Select the characteristics of the subject property, which are to be measured in determining value;
  2. Find competitive properties with similar characteristics;
  3. Compare the characteristics of the competitive properties with the subject property;

4. Reconcile the characteristics of the competitive properties to an indication of the market value for the subject property.

The characteristics that are to be measured in determining the market value are Site value, location (access/Visibility), lot size, lot utility, soil condition, zoning and conditions.

- If the Income Approach is used by the appraiser, the following steps should be addressed in the appraisal process and reviewed by SAFE-BIDCO:
  1. Estimate the potential gross income (market rent or contract rent);
  2. Deduct from potential gross income, allowance for vacancy and income loss;
  3. Add other income to derive effective gross income;
  4. Deduct from effective gross income, net operating expenses to derive net operating income;
  5. Estimate the appropriate rate of return on the investment required making ownership of the property a competitive and acceptable investment;
  6. Apply the capitalization formula to derive market value estimate of the property.

The appraisal report must reflect the final value in dollars and state that the value is “subject to” the completion of the necessary cleanup action.

### **Loan to Value (LTV)**

Loan to Value is defined as the lenders loan amount divided by the appraisal/purchase price. LTV determines how much debt the lender is securing with the property. When referring to LTV, it is specific to combined loan and lien position.

### **Combined Loan to Value (CLTV)**

Combined Loan to Value is the total amount of liens or loans divided by the appraisal/purchase amount. CLTV determines the total equity available in the property and is one of the indicators of risk to the loan. A higher CLTV typically equates to a riskier loan. Such compensating factors would be a strong credit and financial history or financial strength through large cash reserves.

Program guidelines allow a maximum LTV/CLTV of 80% for CCRLF loans. Properties with a maximum LTV/CLTV may require other factors to be used to help compensate for the riskier lien position.

Example of LTV and CLTV:

Appraised Value = \$1,000,000  
1st Trust Deed = \$600,000

2nd Trust Deed = \$200,000

Under this example the first trust deed lien holder has an LTV of 60% (\$600,000/\$1,000,000) and a CLTV of 80% (\$600,000 + \$200,000/\$1,000,000).

If the purchase price is less than the appraisal value, SAFE-BIDCO will use the lesser of the two amounts for lending purposes.

### **Credit Memorandum to CCRLF Loan Committee**

Once the underwriting analysis and appraisal review are complete, SAFE-BIDCO will prepare a credit memorandum. The credit memorandum provides information about the project and credit information of the applicant. The credit memorandum is combined with the site eligibility evaluation to complete the Loan Recommendation Memorandum. The Loan Recommendation Memorandum is drafted for review by the Loan Committee Members and subsequent submission to the Deputy Director. The credit memorandum assists the Loan Committee Members in understanding the purpose of the loan request and the ability to service the debt repayment. As the result of a scheduled Loan Committee Meeting, members make a recommendation to the Deputy Director to approve, deny, or amend the loan application. The recommendation will be prepared in the form of a Loan Recommendation Memorandum from the Loan Committee Chairperson to the Deputy Director. The Deputy Director has the option of agreeing with the Loan Committee Members findings, modifying the decision, or making a different decision.

The credit memorandum may include the following information:

- Loan Number
- Applicant
- Urban Location
- Loan Amount
- Purpose of Loan Request
- Interest Rate
- Repayment Source (Primary and Secondary)
- Term (Months/Years)
- Payment (Monthly/Annually)
- Security (First Deed of Trust)
- Guarantors
- Banking Relationship
- Credit analysis by SAFE-BIDCO
- Structure and Project Description
- Project (Funds to be used for)
- Collateral
- Company Analysis (History)
- Ownership
- Succession and Life Insurance
- Product/Service
- Customers/Clients
- Competitors
- Keys to Success
- Site Control
- Regulatory Compliance
- Financial Analysis
- Guarantor Analysis
- Strengths and Weaknesses
- Staff Recommendation
- Financial Covenants
- Program Covenants
- Security Covenants

## **Purpose of the Loan Committee**

The purpose of the Loan Committee is to review incoming applications and make recommendations to the Deputy Director or his/her designee on loans presented under the CCRLF Program. (Refer to the CCRLF Loan Committee Manual for more detail.) The Loan Committee is composed of one representative from each of the California's Urban and Rural Brownfields Coalition Partners. The Loan Committee reviews various aspects of each Loan Approval Memorandum and makes a recommendation to the Deputy Director to approve, amend, or decline each loan application based on the following information:

- Financial Strength of the Applicant  
*Does the applicant have the wherewithal to make the monthly obligation?*
- Credit History and Worthiness  
*Has the applicant been responsible in the past with their other creditors?*  
*How established is the applicant with credit?*  
*Does the applicant have reasonable explanations for blemishes in their credit history?*
- Credibility of the applicant  
*Is the applicant credible?*  
*Does the information provided make sense?*
- Condition of the property  
*What is the condition of the property?*  
*Is the loan-to-value (LTV) within the guidelines?*

## **Loan Committee Meetings**

SAFE-BIDCO will present the credit memorandum portion of the Loan Approval Memorandum to the Loan Committee Members for their review at a scheduled Loan Committee Meeting. The Loan Committee will meet as needed to review loan applications, supporting documentation, and the draft Loan Recommendation Memorandum. The Loan Committee Members will evaluate SAFE-BIDCO's recommendations regarding loan applications, amendments, and supporting documentation. The Loan Committee will forward the application and recommendation to approve, decline, or amend to the RLF Grant Manager to request the Deputy Director's final decision. (See *Loan Committee Manual* for detailed procedures.)

## **Recommendation of Loan Committee/Decision of Deputy Director**

After the Loan Committee makes a recommendation (approve/decline/amend) to the Deputy Director, the Deputy Director will make the final decision. The Deputy Director's decision will be provided in written format to the applicant.

The applicant will receive a written decision of action taken by the Loan Committee Members and the Deputy Director approximately seven business days after the Loan Committee meeting. The applicant will receive an Approval, Declination, or Amendment

Letter based on the Deputy Director's decision. The letter provides a statement of the action taken and the reasons for the action taken by the Loan Committee and the Deputy Director. If the letter declines or amends the requested loan amount/provisions, it may indicate steps or actions the applicant can take to provide additional information. If the applicant submits the required information outlined in the letter, the new information submitted will be considered at the next Loan Committee meeting. The Loan Committee Members will review the new information and render a recommendation (approve/decline/amend) to the Deputy Director.

### **Approve/Decline/Amend Letter**

- Commitment/Approval letter (Applicant) **(Appendix E-1)**
- Declination (Decline) letter **(Appendix E-2)**
- Amendment Letter **(Appendix E-3)**

### **Commitment/Approval Letter**

The Commitment/Approval Letter sets forth the principal terms and conditions of the loan approval. More specific and or additional terms and conditions may be formalized in a subsequent loan documents. DTSC will commit funds to an approved applicant for a specific loan amount, repayment term, and interest rate. These terms and conditions are negotiated for each individual loan. The applicant must meet the terms and conditions of the loan approval as outlined in the Commitment Letter before funding can occur, and the RLF Grant Manager must obtain USEPA approval of the proposed loan. Loan funds will be disbursed based on the Commitment Letter and after finalization of the CCRLF Oversight Agreement or equivalent, with the agreed upon oversight agency, and finalization of the loan. A draft of the Commitment Letter is prepared by SAFE-BIDCO and forwarded to the Deputy Director (through the RLF Grant Manager) for review and signature. The signed Commitment Letter is mailed to the Applicant for their signature. The letter with the original signatures is to be returned to SAFE-BIDCO. The applicant should retain a copy of the Commitment Letter. Unless signed and returned by the applicant, the Commitment Letter expires ninety (90) calendar days from the date of issuance. The Commitment Letter may be extended for one additional ninety (90) day period with approval of the Deputy Director.

The following should be covered in a Commitment Letter:

- Exact name of borrowing entity(ies)
- Summary of the credit facility
- Loan Amount/Security
- Purpose of the credit
- Draw down options, repayment and loan maturity
- Guarantors
- Subordinations
- Collateral and appraisals
- Interest Rate
- Commitment and other fees
- Repayment provisions
- Material representation and warranties
- Material conditions precedent
- Financial conditions precedent

A statement is to be included in all Commitment Letters indicating that:

- The Commitment Letter is not intended to define all terms and conditions of the financing, it is intended only to outline certain basic points around which the final terms and conditions and documentation are to be structured; and
- Lender reserves all of its statutory and regulatory powers, rights, and remedies, both legal and equitable, which may pertain to this commitment. **(see Appendix E-1 for a Sample Commitment Letter)**

### **CCRLF Oversight Agreement**

Once the applicant signs the Commitment Letter and the Deputy Director endorses the Loan Committee recommendation and grants final approval for a loan request, the applicant must enter into an enforceable cleanup agreement before loan funds can be disbursed. If a CCRLF loan is approved, the applicant will enter into a CCRLF Oversight Agreement (DTSC's standardized format may be obtained by contacting the RLF Grant Manager).

For a CCRLF loan, the purpose of the CCRLF Oversight Agreement is for the applicant to enter into an agreement with DTSC/CURB Partner for the oversight of remediation at the property as a condition of the loan. The oversight agreement is for the applicant to perform all actions necessary to respond to the release or threatened release of hazardous materials at the property, subject to the oversight and approval of DTSC/CURB Partner. Oversight agencies are responsible for ensuring that cleanup activities comply with all applicable federal and state laws/regulations. DTSC may provide consultation to other oversight agencies if needed. (DTSC's consultation in these instances will be considered part of their "cost share" activities.)

The applicant will submit supporting exhibits for the oversight agreement with CCRLF including, but not limited to, the Property Diagram, Property Location Map, and Scope of Work & Calendar of Tasks & Schedule. DTSC/CURB Partners will make all efforts to ensure all appropriate documentation has been completed and is part of the file as required by the oversight agreement before loan funds are disbursed.

### **Scope of Work (CCRLF)**

The following are the minimum tasks to be completed prior to submission of an application:

- Submittal of Existing Data
- Review of Property Remediation
- Sampling and Analysis
- Remedial Investigation/Feasibility Study (RI/FS)

The remaining work that may be completed as part of a CCRLF Oversight Agreement includes:

- Removal Actions
- Removal Action Workplan
- Remedial Action Plan
- Remedial Design and Implementation Plan
- Implementation of Final Removal Action Workplan (RAW)
- Implementation of Final Remedial Action Plan (RAP)
- Changes During Implementation of a Final RAP/RAW
- Public Participation/Community Relations
- Land Use Restrictions

**(Contact the RLF Grant Manager to obtain a copy of the sample CCRLF Oversight Agreement)**

### **Closing Requirements on Fund Recipients**

Before a contract for financial assistance is transmitted for signature, a recipient must certify that it has complied and will comply with all requirements of federal law that are determined by USEPA to apply to the operation of the fund. A recipient shall:

- Establish an official file, containing an adequate record of all significant actions relating to the project;
- Establish accounts that accurately and adequately show all amounts of money:
  - I. received as financial assistance from CCRLF,
  - II. received and spent on the project, and
  - III. used to satisfy matching requirements under CCRLF;
- Establish a system of accounting which ensures that the final total costs of the project, including all direct and indirect costs, are recorded accurately;
- Provide by July 30<sup>th</sup> of each year, a report of match costs for the preceding period of July 1<sup>st</sup> to June 30<sup>th</sup>. This report is to be sent to the RLF Grant Manager.
- Establish and maintain such other accounts and records as are required by to ensure compliance with requirements for reporting established by the Federal Government; and
- Retain all records relating to the project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by DTSC.

Any records of a recipient relating to the project must be made available at any reasonable time for inspection or copying by any authorized representative of DTSC.

Whenever an audit is required by federal law or by an agency of the Federal Government, or whenever it is determined that an audit is necessary to ensure the integrity of the revolving loan fund, DTSC may require that an audit be performed of financial records relating to a project. Any audit required must be performed at the expense of the recipient by a certified public accountant that is independent of the recipient. A report of the audit must be prepared by the auditor in the form prescribed by DTSC.

Before awarding any contract for remedial services relating to a project, an applicant for financial assistance shall submit to the applicable CURB Partner, a request for approval of the contract award. The applicable CURB Partner may approve the award of the contract only to the lowest responsive, responsible bidder, unless there are specific reasons to reject the lowest bid. If the lowest bid is rejected based on specific reasons, the CURB Partner shall present this reason to the RLF Grant Manager for review/consideration. If the RLF Grant Manager has concerns about the rejection of a low bidder, those concerns will be addressed in a letter to the applicable partner for consideration. All CURB Partners are responsible for reviewing their applicant contract bids to ensure that the applicant, his consultants, and his contractors have complied with the positive effort policies relating to disadvantaged businesses. DTSC shall not participate directly in the resolution of any dispute relating to bidding. The resolution of any such dispute is the sole responsibility of the applicant. A request for approval must not be granted until any such dispute has been resolved.

A recipient of financial assistance shall comply with the provisions of the Davis-Bacon Act, 40 USC section 276a et seq., if applicable. CURB Partners are each responsible to review the final contract documents to verify that the proper federal and state wage determinations have been included. The recipient is responsible for assuring compliance with all applicable labor laws.

A recipient of financial assistance shall comply with the requirements of federal law concerning the participation of disadvantaged businesses. Each recipient of financial assistance shall attempt to comply with the fair share percentages established annually for disadvantaged businesses by the division and USEPA. An applicant for financial assistance shall submit with his request for approval of an award a report, in the form prescribed by the applicable CURB Partner, of participation by disadvantaged businesses. If the contractor for a project awards any subcontracts relating to the project, he shall take affirmative steps to ensure that disadvantaged businesses are used to the extent possible as sources of supplies, equipment, materials, and services. These affirmative steps must include:

- Including such businesses on solicitation lists;
- Assuring that such businesses are solicited if they are potential sources;
- Dividing total requirements, if economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged businesses; and

During the implementation of site cleanup actions, the recipient shall permit any authorized representative of DTSC and/or the applicable CURB Partner to enter onto the site of the project at any reasonable time.



A copy of each executed change order must be submitted to the applicable CURB Partner.

## **Loan Closing**

Upon recommendation from the Loan Committee and approval of a loan request by the Deputy Director, loan file(s) will be forwarded to SAFE-BIDCO staff for loan closing and processing. The approved Loan Approval Memorandum (approved by the Deputy Director) may contain certain covenants (financial, program, or security) that shall be adhered to or will be met before loan funds can be allocated and disbursed from DTSC's Accounting Office. These covenants will become part of the loan documents signed by the applicant at the escrow/title company and will control how funds are disbursed to the applicant or authorized contractor. Additional loan documents (promissory note, deed of trust, escrow instructions, etc.) contain the terms and conditions of the approved loan used to close and allocate the loan. SAFE-BIDCO will prepare a commitment letter and a closing letter to the applicant using the loan approval memorandum and minutes from the Loan Committee meeting.

## **Closing Loan Letter**

The Closing Letter is a written document, which informs the applicant of additional information/documentation necessary to close and fund the loan request. Items contained in the Closing Letter can include, but are not limited to, name and address of escrow/title company, evidence of insurance, copies of documents, statements, invoices, receipts, or purchase orders not obtained earlier, etc. The Closing Letter is sent to the applicant at the same time as the Commitment Letter.

Loan documents must be properly signed, executed and the loan entered into DTSC's Account System by the DTSC Accounting Office before funds will be released to the escrow/title company or directly to the applicant. RLF Grant Manager will notify the escrow/title company when loan funds are being mailed for release to the applicant.

## **Disbursement of Program Funds**

When the signed Commitment Letter is received and all closing letter requirements are met by the applicant, DTSC's RLF Grant Manager will order the transfer of the loan proceeds/funds from DTSC's Accounting Office.

SAFE-BIDCO staff will prepare a memorandum titled Request/Transfer of Loan Funds from the Federal Trust Fund Account. The completed memorandum will be approved by SAFE-BIDCO's CFO or President and then forwarded to DTSC's Accounting Office for processing. The memorandum describes the request for the transfer of funds from the Federal Trust Fund Account to the State, and then DTSC's Accounting Office will transfer the entire loan amount to a designated escrow account within 10 working days for disbursement to the applicant upon completion of the loan documents/oversight agreement.

The disbursement of loan proceeds by DTSC may be through an escrow/title company to the applicant or contractors as authorized (in compliance with the Loan Approval Memorandum), or may be disbursed directly to the applicant after certain milestones are met (based on the project completion dates stated in the CCRLF Oversight Agreement) and approved by the Site Manager.

### **Loan Document Ordering**

For loans to private businesses, SAFE-BIDCO staff will prepare loan documents using warranted commercial lending documentation software and will deliver them to the Applicant's title/escrow company.

For loans to government entities, the RLF Grant Manager is responsible for preparation of any needed Contract between public agencies on a case-by-case basis. The RLF Grant Manager will seek the assistance of legal counsel or contracts department, as necessary, for the preparation of said Contract. Once the Contract has been signed by all parties, the RLF Grant Manager will notify SAFE-BIDCO who in turn will forward the remainder of the loan file to DTSC.

### **Loan Servicing**

Billing statements will be mailed to the borrower approximately 14 days prior to the due date. Payments received will first be credited toward interest due, then fees due, and the remainder will be applied to the principal balance. Borrowers who have not made a payment in accordance with the loan terms, or are past due for more than half the payment amount by the end of the tenth (10th) day following their due date will be mailed a late notice by DTSC's Accounting Office, which will increase the amount due by the addition of five percent (5%) of the full payment amount (late charge).

### **Loan Repayment Terms/Interest Rates/Fees**

The repayment period for a revolving fund loan is loan specific. Loans may vary in structure, as the program allows either simple interest loans or loans with "balloon" payments due at maturity. Repayment period may not exceed 4-years from the date of loan closing and full repayment will be due once takeout financing is obtained.

The specific loan provisions for repayment will be recommended by SAFE-BIDCO, after consideration of the applicant's requested terms, and subsequently considered and approved by the Loan Committee. DTSC has the final determination that will be loan specific. Interest rate may not be set below 2%, and may not exceed 4.5%. Rate changes will result in the amount of monthly payments being increased or decreased rather than changing the loan term with each rate change. Interest will be calculated by the simple interest method and based on a 365 day year, using actual days elapsed. Interest will be charged on the outstanding disbursed amount, accrued and added to the principal amount outstanding when disbursement stops.

An initial application fee of \$500 will be collected by SAFE-BIDCO from the applicant at the submission of the initial application. Processing of said application will not

commence until fee is received. A loan fee<sup>1</sup> of 1.5% of the loan amount, out-of-pocket fees, and other applicable documentation charges will be assessed and collected at loan closing. The applicant can request that the amount of loan fees be included in the loan amount.

A single loan under the CCRLF Program shall not be for less than \$200,000, or for more than available funds. There are no prepayment penalties on CCRLF loans.

### **Loan Due Dates/Late Charges/Loan Assumption**

Borrower's payments will be due on the fifth day of each new quarter (with the quarterly due dates being January 5th, April 5th, July 5th, and October 5th), with the first payment due at completion of the site remediation or 1 year after the loan is funded, whichever is first. A late charge of 5% of the payment amount due will be assessed on loans more than 10 days past due and/or actual NSF fee for checks returned for insufficient funds. CCRLF loans are not assumable.

### **Processing**

Payments will be posted to loans effective the date they are received. Amounts received will be applied first to accrued interest, then to late charges due, then to principal.

### **Payment Deferments**

Borrowers may request or be offered periodic deferments, or "interest only" payments. No more than three (3) deferments will be accepted in any 12 month period, and at least one regular payment must be made between any two deferment periods. Deferments have the effect of adding one regular payment to the end of the loan for each month deferred. Deferment periods may be from one to three months per approved deferment. Deferment requests must be submitted to the RLF Grant Manager in writing by the borrower with an explanation as to the reason for the deferment period.

### **Escrow Accounts/Disbursement of Loan Funds**

Upon receipt of the Commitment Letter and miscellaneous items contained in the Closing Letter, SAFE-BIDCO staff will prepare an Escrow Letter requesting information needed to close and fund the loan.

SAFE-BIDCO may open an escrow account with a title/escrow company utilized in the area (unless document closing is performed by a representative of SAFE-BIDCO). This is a safeguard procedure to ensure loan documents are properly executed and all documents required for a successful project are obtained before disbursement of loan proceeds. The applicant will bear all costs associated with the title/escrow company.

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<sup>1</sup> Loan fees may be amended by mutual agreement on a case by case basis.

When an applicant signs loan documents at the title/escrow company, said documents will be forwarded to SAFE-BIDCO for review. The title/escrow company will record all applicable deed(s) of trust and/or other collateral. SAFE-BIDCO will make necessary copies and forward the copied documents to the RLF Grant Manager. (Exhibit F, the CCRLF Oversight Agreement reflecting the tasks to be completed and schedule of completion dates must be completed prior to the close of escrow.)

### **Closing Costs**

The applicant will pay all out-of-pocket expenses associated with closing and funding the CCRLF loan. Costs for items such as transfer taxes, recording fees, and other title related services may vary based on property location.

The costs to close and fund a CCRLF loan may include, but are not limited to:

- Appraisal
- Fee
- Processing Fee
- Wire Transfer Fee
- Hazard Insurance Premium
- Tax and Assessment
- Closing or Escrow Fee
- Notary Fee
- Attorney Fee
- Title Insurance
- Recording Fees
- Credit Report Fee
- UCC-1 Filing Fee
- Area/County Tax/Stamps
- State Tax/Stamps

### **Loan Documents Returned from the Title/Escrow Company**

SAFE-BIDCO staff may prepare a Loan Disbursement Request to be executed with the loan documents in escrow. SAFE-BIDCO will review the Loan Disbursement Request for compliance with the remediation plan. The Loan Disbursement Request may require a check made payable to the escrow company be prepared and mailed according to the escrow instructions. SAFE-BIDCO will provide the escrow company with specific instructions to hold the loan proceeds in the applicant's escrow account until all conditions of the instructions are met.

Once all necessary loan documents are received and approved, the title company will notify the RLF Grant Manager and request funds transfer release to borrower to issue the full amount of the loan directly to the applicant/borrower. The title company will also provide notice to the RLF Grant Manager and SAFE-BIDCO that loan funds were disbursed.

## **Site Remediation**

As part of the approval and escrow process, the applicant will be required to provide a copy of a signed and executed CCRLF Oversight Agreement (copy available from the RLF Grant Manager.) The agreement will thoroughly describe each task required to complete the project, a complete breakdown of all costs associated with each task, and a timeline for completion of each task. Approval of an Oversight Agreement shall be referenced in the loan documents.

Each CURB Partner is responsible for overseeing the work of contractors involved in the site remediation process and ensuring that contractors are properly licensed with the State of California, in good standing, to perform the work described in the contract. The contract must describe all work that is to be sub-contracted by the primary contractor. Sub-contractors must also be properly licensed. The SCOD Representative and/or applicable Site Manager are responsible for ensuring that all state and federal cleanup requirements are met for the remediation process.

## **Progress Reporting**

Each Oversight Agency in coordination with the applicable CURB Partner is responsible for coordinating with the loan recipient to provide a brief quarterly report to the RLF Grant Manager for each project they are overseeing. The report should include a summary of estimated expenditures to date and a project status. The RLF Grant Manager will make reports available to the CURB Partners and/or may post them on the RLF Loan DTSC website.

## **Accounting**

### **Booking of the Loan and Servicing**

DTSC's Accounting Office will track disbursement and repayment history of all CCRLF loans on a computerized accounting system. The Applicants will send their loan payments directly to DTSC's Accounting Office, who will apply payments received on each loan record.

### **Restructuring or Modifying CCRLF Loans**

Terms and conditions of existing loans may be modified, as deemed appropriate; particularly to preserve the assets of the business and value of loan collateral should there be a problem with loan repayment. Restructuring or modifying loans will be done in cooperation between DTSC and SAFE-BIDCO. Revisions of the loan agreement and supporting loan documents will be allowed only when it results in a reasonable assurance of improved repayment ability and/or enhanced viability of the Applicant. The Applicant must submit a written restructure or modification request letter to the RLF Grant Manager for consideration. The request must identify the need to restructure/modify the existing loan agreement. Supporting documentation (updated financial information, etc.) must be provided to the RLF Grant Manager to obtain effective evaluation of the request. Program staff will prepare a loan

restructure/modification memorandum that documents the need for the restructure or modification. If approved by the Deputy Director, a loan modification agreement will be prepared by SAFE-BIDCO staff, and signed by the Applicant. The Applicant will be responsible for any out of pocket expenses associated with restructuring or modifying their existing loan.

### **Collection of Delinquent Loans**

DTSC is responsible for monitoring loans to determine when a loan becomes delinquent. A written late notice will be sent to any borrower who becomes over 10 days late for any payment, or partial payment. Concurrent with the late notice, a late charge will be assessed against the loan. The amount of the late charge will be reflected on the late notice. If a CCRLF loan account becomes further delinquent, DTSC will take appropriate collection action. These collection actions are defined as addressing routine delinquency, and addressing serious delinquency.

### **Addressing Routine Delinquency**

A late notice will be sent by DTSC's Accounting Office to any borrower more than ten days late, whether or not that borrower has been in communication with DTSC. Prior to the 30th day of contractual delinquency DTSC will contact the borrower by telephone or in person to (a) inform the borrower of the delinquency, (b) establish the reason for non-payment, (c) determine when the past due payment will be made, and (d) notify the borrower that they are expected to maintain the loan payments according to the note terms or, at the very least, contact the RLF Grant Manager immediately upon determining that a payment cannot be made on time.

### **Addressing Serious Delinquency**

If at any time a loan becomes past due (refer to section on "**Delinquency Accounting**"), or if DTSC receives official information that indicates a pending delinquency (such as a Bankruptcy Notice), the loan will be considered a serious delinquency (or in default). The borrower may be contacted by letter, phone or in person until a plan has been worked out between the borrower and DTSC to bring the account to current status. Upon making the determination that the borrower is seriously delinquent and has the potential for default or is unwilling to maintain the loan payments, DTSC will review the account to determine the appropriate course of action to protect the assets of DTSC.

The location and condition of any tangible collateral should be ascertained. This may involve a site visit. Guarantors or co-makers should be notified of the status of the loan to avoid catching them off guard should demand later be issued. Also, guarantors can be helpful in collecting from the maker.

Collection action by DTSC beyond the mailing of a late notice or routine oral or written communication that may occur includes:

- Issuance of a formal, written demand for a loan balance.
- Filing a lawsuit to recover a loan balance.

- Placing a lien on property.
- Filing a Notice of Default against collateral (foreclosure).
- Ordering the sale of repossessed or foreclosed collateral.
- Filing a lawsuit to recover a deficiency balance.
- Conducting an Order of Examination.
- Filing a petition with a Bankruptcy Court requesting that a borrower be adjudged a bankrupt.

All persons involved in the collection of delinquent loans will, at all times, adhere to applicable state and federal law governing collections including, but not limited to: Federal Regulation B (Equal Credit Opportunity), requiring equal treatment of debtors regardless of their sex, age or marital status, and the Federal Fair Debt Collection Practices Act, which prohibits harassment of delinquent debtors.

### **Repossession and Foreclosure**

If the borrower and DTSC cannot resolve a non-payment issue, DTSC may consider recovery and sale of the loan collateral. In the case of personal property collateral, particularly motor vehicles, the borrower is expected to surrender the collateral at a time and place designated by the lender. However, if the lender has reason to believe that the borrower may attempt to hide the collateral, or there is immediate concern for the well-being of the collateral (it is uninsured or being subjected to abuse), unannounced repossession may be necessary. DTSC may physically repossess collateral if the borrower is cooperative and it is safe to do so. If it is necessary to engage the services of a reposessor, the person or firm so engaged must be bonded and licensed, and have a favorable reputation.

Reposessed and personal property collateral should be assessed as to condition, and inventoried (if several items) immediately upon its delivery to the lender. It should then be held in safekeeping and insured against loss.

After all collateral has been sold and the proceeds of the sale(s) applied to the loan, and if there is a balance remaining, the borrower is notified of this deficiency balance by the certified mailing of a demand notice, demanding payment of the balance by a specific date. If the balance has not been paid by the date specified, DTSC will consider the appropriate courses of action for the situation.

If uncontaminated real property is used as collateral, foreclosure is an option that may be considered if no other means of resolving the problem are available. The procedure of foreclosure differs from that of repossession. Foreclosure is commenced by the Deed of Trust beneficiary instructing the Trustee (Title Company) to file a notice of default.

Due to the nature of the CCRLF Program, real property collateral may be second or third trust deeds, and therefore subject to one or more senior liens. If the CCRLF loan is in default, it is likely that the senior lienholder's loan(s) are also in default. The actions of other lienholders should be monitored in order to protect the lienholder's interest, as foreclosure by a senior lienholder will eliminate the existence of any junior liens.

If a balance remains on the loan after the sale of real property acquired through regular foreclosure, DTSC will determine if the borrower will be pursued for the deficiency.

## **Bankruptcy**

The Bankruptcy Court will issue a stay order in all cases when a borrower files for protection under Chapter 7, 11 or 13 bankruptcy laws. This order requires all creditors to stop any action then ongoing and to cease all collection activity on the debt. This period is also an opportunity for secured creditors to file a claim against the assets of the borrower. The claim is filed with the bankruptcy court having jurisdiction over the case. The court will also appoint a trustee to process the claim and deal with the creditors and the assets. Secured creditors are given preference over unsecured creditors, or those secured by intangible assets, in the payment of their claims.

## **Revision of Repayment Terms**

If the reason for non-payment is considered temporary, the loan may be revised with the approval of DTSC. During any period of revision, the borrower must at least be able to make interest payments, and must understand that the revision is temporary. He/She is expected to resume regular payments at the end of the revision period.

## **Delinquency Accounting**

Delinquency accounting is as of the last day of each quarter or annually, dependent upon loan terms. The loan status categories used in this monthly accounting are current, 30 day, 60 day, 90 day, and 120+ days. For reporting and accounting purposes only, a loan is considered current if it's next due date falls within the quarter just ended, or later. For example, as of July 31st, any loan due for its July or later payment would be in the current category.

A loan is considered to be 30 days past due if its quarterly payment was due within the month prior to the 5<sup>th</sup> day of the month just ended. For example, as of the 6<sup>th</sup> day, any loan due for its July payment would be in the 30 day category, and so forth. This method of reporting delinquency is used to standardize reporting on loans with different due dates, and differs from the contractual delinquency of a loan, which determines when late notices, late charges, and default rates are imposed. A loan is contractually delinquent when it is one or more days late for a part of a payment.

## **Administrative Procedures**

Administrative Loan files, including all pertinent documentation, will be the property of DTSC and will be stored in a secure non-public location. The Credit File portion of the Administrative Loan File will be retained by DTSC and stored in locked cabinets. SAFE-BIDCO will deliver the sealed Credit File to DTSC at the time of loan closing.

Quarterly reporting to USEPA is the responsibility of DTSC.



In order for DTSC's Accounting Office to meet the federal reporting requirements, a cost share report with supporting documentation, covering the period from July 1 to June 30 of each State fiscal year is to be provided by each CURB Coalition Partner and submitted to the RLF Grant Manager with a copy to DTSC's Accounting Office. This report is due no later than July 30<sup>th</sup> of each calendar year.

## **Other Provisions**

### **Non-Discrimination/Equal Opportunity Lender**

CCRLF will loan monies on a nondiscriminatory basis and no Applicant will be denied a loan on the basis of race, color, national origin, religion, handicap, sex, marital status, sexual orientation or age (provided that the Applicant is of sufficient age to enter into a binding contract). Furthermore, the CCRLF will not discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith exercises any rights under the Consumer Protection Act.

### **Disclosure of Applicant Information**

Applicants of the CCRLF Program are advised that the Program uses public funds. Public records submitted to DTSC may be made public pursuant to the statutes of the United States of America and the State of California unless they are exempt by statute. USEPA, DTSC, and SAFE-BIDCO will each adhere to the federal Privacy Act of 1974 (5 U.S.C. § 552a), a law which mandates how federal agencies maintain records about individuals. The law strives to balance the government's need to maintain these records with the individual's right to be protected from unwarranted invasions of personal privacy. DTSC is also subject to the California Information Practices Act of 1977, Civil Code sections 1798-1798.78, which protects personal data submitted to DTSC.

The federal Privacy Act requires that agencies collect only information on individuals that is necessary to carry out an agency function, provide safeguards to protect the records from unauthorized access and disclosure, allow people to see the records kept on them, and provide an opportunity to correct inaccuracies.

As a State entity, DTSC's records (and those of the loan recipients and contractors) are also subject to the Public Records Act. The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (Government Code § 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

DTSC and SAFE-BIDCO do not disclose personal financial information of applicants to third parties for marketing purposes.

## **Flood Hazard Insurance**

Where applicable, DTSC will require Applicants to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93-234, as amended (42 U.S.C. 4002, et seq.).

## **Conflict of Interest**

Conflict of interest provisions govern the roles and responsibilities of the lead agency, fund manager, site manager, and borrower in compliance with C.F.R. §31.36(b) (3) and §35.6550(b). The following is a partial list of situations that may indicate a conflict of interest:

- Funds shall not be made available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to any employee of DTSC or any member of the CCRLF's Loan Committee without prior disclosure and written approval of the Deputy Director.
- No member of the Loan Committee may vote on or participate in discussions of projects where that Loan Committee member has a direct personal financial interest in any contract or Brownfields project, existing or proposed, that may be brought before the Loan Committee. For purposes of this section, "financial interest" shall mean a substantial interest held by a member or member's immediate family, such as:
  - a) An ownership interest in a business;
  - b) Employment or prospective employment for which negotiations have begun;
  - c) An ownership interest in real or personal property;
  - d) A loan or other debt or interest in business or real property; or
- A position as director or officer in a business. No employee of DTSC, or member of the Loan Committee, or person related to the employee of DTSC or member of the Loan Committee by blood, marriage, law or business arrangement shall receive any benefits resulting from the use of loan funds. Committee members affected must disclose to DTSC on public record the proposed or potential benefit to the Deputy Director. The Deputy Director will make a determination that the benefit involved is not so substantial as to affect the integrity of DTSC's decision process and of the services of the employee or the Loan Committee.
- An employee or Loan Committee Member of DTSC shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for their self or for another person, from any person or organization seeking to obtain a CCRLF loan.

- Former DTSC employees or Loan Committee Members are ineligible to apply for or receive loan funds for a period of one year from the date of termination of their services unless approved in writing by the Deputy Director.
- No employee of DTSC, or member of the Loan Committee, or person related to an employee of DTSC or member of the Loan Committee by blood, marriage, law, or business arrangement shall be allowed to purchase or receive any asset held by this Program without first paying the fair market value of the asset.

Also refer to DTSC's regulations at 22 CCR § 66250-66250.2 and the Political Reform Act of 1974, Government Code § 81000 et seq. for applicable departmental and State requirements.

### **Evaluation for Windfall Lien**

Under CERCLA section 107(r), if there are unrecovered cleanup costs incurred by the United States at a property owned by a bona fide prospective purchaser and if certain specified conditions are met, the United States shall have a lien on the property. One of the specified conditions is that the cleanup at the property increases the fair market value of the property above the fair market value of the property that existed before the cleanup was begun. A guidance memorandum issued July 16, 2003 by USEPA and the Department of Justice discusses USEPA's policy on windfall lien enforcement. Based on that memorandum, the following is a summary of situations where USEPA **will generally not seek** to perfect a windfall lien:

- Post-Cleanup Acquisitions. USEPA will generally not perfect a windfall lien where a bona fide prospective purchaser acquires the property at fair market value after cleanup.
- Previous Full Resolution of Potential Windfall. USEPA will not typically perfect a windfall lien if USEPA has resolved the liability of an owner, who is liable under CERCLA § 107(a)(1), pursuant to a settlement or successful recovery of response costs that took into account the full value of the property as if cleanup were complete, including any potential windfall from USEPA's cleanup activity.
- Specific Types of Expenditures. USEPA will generally not perfect a windfall lien where USEPA only spends money on the following two types of activities at a site. First, where USEPA's only expenditures at a site are Brownfield loans (i.e., assessment, cleanup, revolving loan fund, and job training monies); USEPA will generally not perfect a windfall lien on the property. Second, where USEPA's only costs are preliminary site assessment or site investigation costs, and USEPA does not anticipate undertaking removal or remedial actions at the site, USEPA will generally not perfect a windfall lien on the property.
- Specific Property Uses. When a bona fide prospective purchaser acquires a property that will be put to one of the following uses, USEPA will generally not perfect a windfall lien on the property. First, where a bona fide prospective purchaser acquires property and uses it for residential purposes, and both the seller and purchaser are nongovernmental and noncommercial entities (i.e., a homeowner-to homeowner sale), USEPA will not, as a general matter, file a

windfall lien on the property. Second, where a bona fide prospective purchaser acquires a property for the creation or preservation of a public park, green space, or similar public purpose, USEPA will generally not perfect a windfall lien.

- Full Cost Recovery from Potentially Responsible Parties. In appropriate circumstances, where there is a substantial likelihood that USEPA will recover all of its cleanup costs from liable parties, the Agency will generally not perfect a windfall lien on the property.
- Applicability of Enforcement Discretion Policies. USEPA has previously identified circumstances where the Agency will exercise its enforcement discretion and generally not pursue current landowners for CERCLA cleanup or cost recovery. Where one of these enforcement discretion policies would apply to a bona fide prospective purchaser, the Agency will generally not perfect a windfall lien against the property. Similarly, if the seller of the property had previously received a "No Current Superfund Interest" comfort/status letter explaining that USEPA does not anticipate taking further response action at the site, then USEPA would generally not seek to perfect a lien on the property.

As noted in the Memorandum, USEPA has not been and will not be involved at the vast majority of Brownfield sites. If USEPA does not incur any response costs at a site, USEPA will not have a windfall lien on the property. However, even at sites where USEPA has been or is involved and has incurred response costs, EPA may decide not to perfect a windfall lien. A USEPA decision to not perfect a windfall lien does not affect USEPA's intent to recover costs from CERCLA liable parties.

Based on the Memorandum, the following summarizes situations that may lead USEPA to seek a windfall lien:

- USEPA has substantial unreimbursed cleanup costs which USEPA is unlikely to recover from liable parties;
- There is a likelihood that a bona fide prospective purchaser will reap a significant windfall as a direct result of USEPA's expenditure of response costs at a site (e.g., USEPA conducts a cleanup at a site during a bona fide prospective purchaser's ownership);
- A real estate transaction, or series of transactions, structured so as to permit:
  - A bona fide prospective purchaser to retain an increase in fair market value resulting from USEPA's cleanup action (e.g., a liable owner sells property to bona fide prospective purchaser at below fair market value); or
  - A liable owner to sell property to avoid the consequences of CERCLA liability (e.g., sales that avoid USEPA perfection of CERCLA § 107(l) lien against the property).

USEPA intends, by identifying situations where USEPA will or will not generally not pursue a windfall lien, to greatly mitigate the need for site specific responses in most instances. However, there may be site-specific circumstances where it may be appropriate for USEPA Regions to provide a comfort/status letter consistent with

USEPA's Comfort/Status Letter policy. USEPA developed four sample comfort/status letters for addressing some common inquiries regarding contaminated properties. Of course, where there has been no federal response action at a site, there will be no windfall lien, and no need for a comfort/status letters for addressing some common inquiries regarding contaminated properties.

If it becomes evident through the Site Manager's or SAFE-BIDCO's investigation that the site may be subject to a USEPA windfall lien, the RLF Grant Manager should be immediately notified by the party making the discovery. The RLF Grant Manager will consult with USEPA to determine if a windfall lien will be sought. If USEPA determines that there are grounds for a windfall lien, the RLF Grant Manager is advised to notify the Applicant of the situation regarding the Applicant's property.

## APPENDIX A

### **Acronyms/Definitions List**

|                     |  |
|---------------------|--|
| BFPP                | Bona Fide Prospective Purchaser as defined in CERCLA   |
| BCRLF               | Brownfields Cleanup Revolving Loan Fund  |
| CCRLF               | California's Urban and Rural Brownfields<br>(CURB) Coalition Revolving Loan Fund   |
| CERCLA              | Comprehensive Environmental Response, Compensation,<br>and Liability Act (December 11, 1980)   |
| CFO                 | Chief Financial Officer  |
| CFR                 | Code of Federal Regulations  |
| CPO                 | Contiguous Property Owner as defined in CERCLA   |
| CURB Coalition      | California's Urban and Rural Brownfields Coalition   |
| CLTV                | Combined Loan To Value ratio   |
| D&B                 | Dunn & Bradstreet business report  |
| DCR                 | Debt Coverage Ratio  |
| DTSC                | Department of Toxic Substances Control   |
| DTW                 | Debt To Worth ratio  |
| EPA                 | Environmental Protection Agency  |
| ILO                 | Innocent Landowner as defined in CERCLA  |
| LTV                 | Loan to Value ratio  |
| NCP                 | National Contingency Plan  |
| PEA                 | Preliminary Endangerment Assessment  |
| RAP                 | Removal Action Plan  |
| RAW                 | Removal Action Work plan   |
| Response Action     | Response Action is defined under Health and Safety Code<br>Section 25323.3 to have the same meaning as defined in<br>Section 9601(25) of the federal act (42U.S.C. Sec.<br>9601(25)). The enforcement and oversight activities of the<br>department are included within the meaning of "response,"<br>respond," or "response action."    |
| RLF Grant Manager   | Staff person in DTSC assigned this function  |
| SAFE-BIDCO          | State Assistance Fund for Enterprise, Business and<br>Industrial Development Corporation   |
| SCOD Representative | An experienced technical employee of the Statewide<br>Cleanup Operations Division, Site Mitigation and Brownfields<br>Reuse Program, DTSC, who is assigned site review tasks in<br>the loan administration process and may or may not<br>ultimately serve as a project Site Manager for DTSC   |
| Site Manager        | For applications sponsored by the Redevelopment Agency<br>of the City and County of San Francisco or the City of Los<br>Angeles, those agencies will have their application reviewed<br>by the technical staff person (or consultant) selected as their<br>Site Manager. For DTSC, refer to the SCOD Representative<br>definition above. |
| TBA                 | Targeted Brownfields Assessment  |
| UCC                 | Uniform Commercial Code  |

## **APPENDIX B**

### **Department of Toxic Substances Control**

#### **CALIFORNIA'S URBAN AND RURAL BROWNFIELDS (CURB) COALITION Revolving Loan Fund Program Contact List**

##### **Department of Toxic Substances Control**

**Thomas Cota, Marketing Manager**

5796 Corporate Avenue

Cypress, California 90630-4732

Phone: (714) 484-5459

E-mail: [TCota@dtsc.ca.gov](mailto:TCota@dtsc.ca.gov)

**Laurie Grouard, RLF Grant Manager**

1001 I Street, 11<sup>th</sup> Floor

P.O. Box 806

Sacramento, California 95812-0806

Phone: (916) 323-3394

E-mail: [LGrouard@dtsc.ca.gov](mailto:LGrouard@dtsc.ca.gov)

##### **Redevelopment Agency of the City and County of San Francisco**

**Lisa Zayas-Chien, Project Manager**

Bayview & Hunters Point Shipyard

One South Van Ness Avenue, 5<sup>th</sup> Floor

San Francisco, California 94103

Phone: (415) 749-2504

E-mail: [Lisa.Zayas-Chien@sfgov.org](mailto:Lisa.Zayas-Chien@sfgov.org)

**Thor Kaslofsky, Assistant Project Manager**

Bayview & Hunters Point Shipyard

One South Van Ness Avenue, 5<sup>th</sup> Floor

San Francisco, California 94103

Phone: (415) 749-2464

E-mail: [Thor.Kaslofsky@sfgov.org](mailto:Thor.Kaslofsky@sfgov.org)

##### **City of Los Angeles**

**Nuna Tersibian, R.E.A.**

Environmental Specialist

200 N. Spring Street, Room 1905

Mail Stop 177

Los Angeles, California 90012

Phone: (213) 978-0872

E-mail: [Nuna.Tersibashian@lacity.org](mailto:Nuna.Tersibashian@lacity.org)

**Carolyn Lin, Environmental Supervisor I**

City of Los Angeles

200 N. Spring Street, Room 1905

Los Angeles, California 90012 E-mail: [Carolyn.Lin@lacity.org](mailto:Carolyn.Lin@lacity.org)

(213) 978-0865

## **APPENDIX C**

### **CCRLF Application**

**(APPENDIX C is comprised of pages 49 - 58)**





Linda S. Adams  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Maureen F. Gorsen, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806



Arnold Schwarzenegger  
Governor

### **Brownfields Cleanup – Borrower Eligibility Criteria**

The following questions help to determine the eligibility of applicants requesting funding under this program. All Applicants must submit information regarding their environmental compliance history. Please include an explanation on a separate page for each "yes" answer.

|  |   |
|--|---|
| Have you ever been convicted of a felony or misdemeanor involving the regulation of hazardous materials?   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Have you ever been convicted of a felony or misdemeanor crimes involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Are you in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that required response action at a site? | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Have you currently, or have you ever have been subject to any penalties resulting from environmental non-compliance at the site subject to the loan request?   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Have you currently, or have you ever, been a generator or transporter of contamination at the site subject to the loan request?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Have you been suspended, debarred, or otherwise declared ineligible for funding or grants under any federal government program?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Is the subject property currently listed, or proposed for listing, on the National Priorities List?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Is removal action required to be taken at the site within 6 months?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Is a Federal or state agency currently planning or conducting a response or enforcement action at the subject property?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Have you ever declared bankruptcy?   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Are you party to any claim or lawsuits?  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |



Linda S. Adams  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Maureen F. Gorsen, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806



Arnold Schwarzenegger  
Governor

### **BROWNFIELDS CLEANUP LOAN – SITE ELIGIBILITY**

**SITE ELIGIBILITY APPLICATION:** Please attach any completed environmental assessments, cost estimates, or environmental consultant's remediation proposal outlining the scope of work. Attach a description of the intended reuse of the property after the remediation is complete.

Project name \_\_\_\_\_

Street address \_\_\_\_\_

APN(s) \_\_\_\_\_

(if there are multiple property addresses and APNs, please provide additional information on a separate page and identify that page as Exhibit 1)

Describe property's current use (commercial, residential, abandoned, unimproved, etc.)

\_\_\_\_\_

Provide a brief history of the site's past uses \_\_\_\_\_

\_\_\_\_\_

Describe any previous environmental contamination on this site that has been remediated?  
(including the removal of underground storage tanks) \_\_\_\_\_

\_\_\_\_\_

What is the site presently zoned for? \_\_\_\_\_

\_\_\_\_\_

Disclose what information specific to the site leads you to believe that environmental contamination needs remediation? (Please submit any completed environmental assessments and remediation plans for review—when applicable, include information about conducting All Appropriate Inquiries.)

- ☐ Phase I completed by environmental consultant
- ☐ Phase II completed by environmental consultant
- ☐ Phase III completed by environmental consultant
- ☐ Remedial action plan prepared by environmental consultant
- ☐ Other: \_\_\_\_\_

\_\_\_\_\_

Name of Environmental Consultant \_\_\_\_\_

Contact Person \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ E-mail \_\_\_\_\_

Is the site listed on a state or federal list of hazardous or contaminated sites? ☐ Yes ☐ No

If yes, disclose the list and contamination: \_\_\_\_\_  
\_\_\_\_\_

Is removal of the hazardous material required to be taken within six months? ☐ Yes ☐ No

Is there a water source on the site or within 100 feet of the site boundaries (e.g., pond, stream, wetland)? ☐ Yes ☐ No

If yes, describe the water source. \_\_\_\_\_  
\_\_\_\_\_

Is the site within a flood hazard area? ☐ Yes ☐ No

Has any government agency notified the applicant of any pollution or safety violations, citations, or enforcement actions at this or any other location? ☐ Yes ☐ No

If yes, provide the following information:

Date of Order \_\_\_\_\_

Agency Name \_\_\_\_\_

Agency Contact \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

What was the resolution of the action? \_\_\_\_\_  
\_\_\_\_\_

Is any litigation pending or threatened, or which would affect the applicant's ability to complete the project? ☐ Yes ☐ No

If yes, disclose the nature of the litigation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remediation Plan: (brief summary and cost estimates) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing below, the applicant certifies that:

- The applicant has never been convicted of a felony or misdemeanor involving the regulation of hazardous materials;
- The applicant has never been convicted of a felony or misdemeanor crimes involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering;
- The applicant is not currently or ever have been a generator or transporter of contamination, or subject to any penalties resulting from environmental non-compliance at the subject site;
- The applicant has never been suspended, debarred, or otherwise declared ineligible for funding or grants under any federal government program.
- The applicant is not potentially liable for response costs at the property pursuant to CERCLA Section 107

Business Name \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_  
Signature / Title

By \_\_\_\_\_ Date \_\_\_\_\_  
Signature / Title



Linda S. Adams  
Secretary for  
Environmental Protection

## Department of Toxic Substances Control

Maureen F. Gorsen, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806

Arnold Schwarzenegger  
Governor

### Brownfields Loan Application

|                      |                               |                    |
|----------------------|-------------------------------|--------------------|
| Loan Amount:<br>\$   | Estimated Project Cost:<br>\$ | Property Location: |
| Project Description: |                               |                    |

**Ownership Information.** Please provide the following information for each owner (attach additional applications if necessary).

|   |                                    |                                   |                                 |
|---|------------------------------------|-----------------------------------|---------------------------------|
| First Name                                    | Last Name                          | Title                             | Percentage of Ownership         |
| Home Street Address                           | City                               | State & Zip Code                  | Home Phone Number               |
| Social Security Number                        | Date of Birth                      | Total Household Income            | Sources                         |
| Employer's Name (if different than applicant) | Years with Company                 | Position                          |                                 |
| ( ) Rent ( ) Own Home<br>Number of Years:     | Home Rent / Mortgage Payment<br>\$ | Total of All Home Mortgages<br>\$ | Current Home Market Value<br>\$ |
| Personal Accounts: Bank Name                  | Account Number                     | Checking Balance<br>\$            | Savings Balance<br>\$           |

### Business Information

|   |                               |                               |
|---|-------------------------------|-------------------------------|
| Complete Legal Business Name              | Federal Tax ID Number         | Date Business Established     |
| Business Street Address                   | City                          | State Zip Code                |
| Mailing Address (if different from above) | City                          | State Zip Code                |
| Business Phone Number                     | Fax Number                    | E-Mail                        |
| Type of Business                          | Number of Full Time Employees | Number of Part Time Employees |

### Legal Entity (Please check one)

|                  |                     |                 |                 |
|------------------|---------------------|-----------------|-----------------|
| ( ) New Business | ( ) Sole Proprietor | ( ) Partnership | ( ) Corporation |
| ( ) Other:       |                     |                 |                 |

### Company Ownership

| Principal | Title | % of Ownership | Social Security No. |
|-----------|-------|----------------|---------------------|
| 1.        |       |                |                     |
| 2.        |       |                |                     |
| 3.        |       |                |                     |
| 4.        |       |                |                     |

**Banking Information**

|                             |                |                 |              |
|-----------------------------|----------------|-----------------|--------------|
| Business Checking Bank Name | Account Number | Current Balance | Contact Name |
|                             |                | \$              |              |
| Business Savings Bank Name  | Account Number | Current Balance | Contact Name |
|                             |                | \$              |              |

**Collateral Offered**

|  | Yes _____ | No _____ | <u>Present Market Value</u> | <u>Present Loan Balance</u> |
|--|-----------|----------|-----------------------------|-----------------------------|
| Land Acquisition   |           |          |                             |                             |
| Land and Building Acquisition  |           |          |                             |                             |
| Machinery & Equipment  |           |          |                             |                             |
| Residential Real Estate  |           |          |                             |                             |
| Other: include items like<br>personal guarantees,<br>assignments, leases,<br>insurance |           |          |                             |                             |
|  | Yes _____ | No _____ |                             |                             |
| Total  |           |          |                             |                             |
| Source of Applicant's Equity / Capital Injection: _____                                |           |          |                             |                             |

**General Information Concerning Applicant, Owners, Cosigners, and Guarantors**

|  |  |  |
|--|--|--|
| Are any assets held in trust?  | Yes _____  | No _____   |
| Have you ever declared bankruptcy?   | Yes _____  | No _____   |
| Are you party to any claim or lawsuits?  | Yes _____  | No _____   |
| Have you been suspended, debarred, or otherwise declared ineligible for funding or grants under any federal government program?  | Yes _____  | No _____   |
| Please include an explanation on a separate page for each "yes" answer.  |  |  |
| The following information is requested to monitor compliance with the equal opportunity laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. If you do not wish to furnish the information, please check the box below. |  |  |
| I do not wish to furnish this information.   | <input type="checkbox"/>                           |  |
| <b><u>Race / National Origin:</u></b>  |  |  |
| <input type="checkbox"/> African American  | <input type="checkbox"/> Asian or Pacific Islander | <input type="checkbox"/> 1. Non Veteran          |
| <input type="checkbox"/> Native American   | <input type="checkbox"/> White                     | <input type="checkbox"/> 2. Viet Nam Era Veteran |
| <input type="checkbox"/> Eskimo or Aleut   | <input type="checkbox"/> Other                     | <input type="checkbox"/> 3. Other Veteran        |
|  |  | <b><u>Gender:</u></b>                            |
|  |  | <input type="checkbox"/> Female                  |
|  |  | <input type="checkbox"/> Male                    |

**Agreements / Signatures** (If more than 2 owners, attach additional signed applications with Ownership section completed)

I represent and declare that this is a true and correct statement of the financial position of the prospective borrower, and its owners, cosigners, and guarantors. The applicants listed above authorizes the State of California or SAFE-BIDCO to obtain credit reports, to check the individual and/or business credit rating of both the business applicant and the individual owner(s) signing below. Each person signing below certifies that he/she is signing on behalf of the business and that such signer is authorized to execute this credit application on behalf of the business applicant. Applicants also authorize the State of California or SAFE-BIDCO to obtain copies of tax returns and information from the IRS or other taxing authorities and agree to execute whatever forms necessary to obtain such information.

|                      |      |                      |      |
|----------------------|------|----------------------|------|
| Authorized Signature | Date | Authorized Signature | Date |
|                      |      |                      |      |
| Authorized Signature | Date | Authorized Signature | Date |
|                      |      |                      |      |

## **Statements Required by Law and Executive Order**

Federal executive agencies, including the U.S. Environmental Protection Agency (USEPA), are required to withhold or limit financial assistance, to impose special conditions on approved loans, to provide special notices to recipients or borrowers and to require special reports and data from borrowers in order to comply with legislation passed by the Congress and Executive Orders issued by the President and by the provisions of various inter-agency agreements. USEPA has issued regulations and procedures that implement these laws and executive orders.

The Borrower will carry out the Project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in (42 USC 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Contingency Plan (NCP) (40 Part 300). In addition, the loan recipient agrees to comply with the following federal statutes:

### **Privacy Act (5 U.S.C. 552a)**

The Privacy Act of 1974 is a law which mandates how federal agencies maintain records about individuals. The law strives to balance the government's need to maintain these records with the individual's right to be protected from unwarranted invasions of personal privacy. The Privacy Act requires that agencies collect only information on individuals that is necessary to carry out an agency function, provide safeguards to protect the records from unauthorized access and disclosure, allow people to see the records kept on them, and provide an opportunity to correct inaccuracies.

Any person can request to see or get copies of any personal information that the USEPA has in his or her file, when that file is retrievable by individual identifiers, such as name or social security numbers. Requests for information about another party may be denied unless the USEPA has the written permission of the individual to release the information to the requestor. Disclosure exceptions that do not require consent of the individual of record are: internal agency request, Freedom of Information Act requirements, routine agency use, requests by the Bureau of the Census, statistical research or reporting requests, preservation of records by the National Archives and Records Administration, requests for civil or criminal law enforcement, Congressional disclosure requests, disclosure for health or safety purposes, requests by the General Accounting Office, requests made pursuant to the order of a court of competent jurisdiction, or for debt collection {Federal Claims Collections Act of 1966 [31 U.S.C. 3701(a)(3)] & Debt Collection Act of 1982 [P.L. 97-365]}.

When this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, the USEPA may refer it to the appropriate agency, whether Federal, State, local, or foreign, charged with responsibility for or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. See Fed. Reg. 8020 (1991) for other published routine uses.

Complete USEPA Privacy Act procedures are set out in 40 CFR Part 16.

### **Freedom of Information Act (5 U.S.C. 552)**

This law provides, with some exceptions, that USEPA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest USEPA office and be identified as a Freedom of Information request.

## **Relationship of the Freedom of Information Act to the Privacy Act**

The Freedom of Information Act (FOIA) and the Privacy Act both deal with the disclosure of information held by the Federal Government. The FOIA generally gives the public the right to inspect their government's records, but has exemptions which permit the withholding of certain limited classes of records, including records which would cause a clearly unwarranted invasion of personal privacy if disclosed. As a general rule, the Privacy Act does not affect the public's right of access to records available under the FOIA.

## **Right of Financial Privacy Act of 1978 (12 U.S.C. 3401)**

This is notice to you as required by the Right of Financial Privacy Act of 1978, of the USEPA's, State of California Department of Toxic Substances Control's (DTSC) and State Assistance Fund for Enterprise, Business and Industrial Development Corporation's (SAFE-BIDCO) access rights to financial records held by financial institutions that are or have been doing business with you or your business, including any financial institutions participating in a loan or loan guarantee. The law provides that the USEPA, DTSC, & SAFE-BIDCO shall have a right of access to your financial records in connection with its consideration or administration of assistance to you in the form of a Government loan or loan guarantee agreement. The USEPA, DTSC, or SAFE-BIDCO is required to provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records, after which no further certification is required for subsequent accesses. The law also provides that the USEPA's, DTSC's and SAFE-BIDCO's access rights continue for the term of any approved loan or loan guarantee agreement. No further notice to you of USEPA's, DTSC's and SAFE-BIDCO's access rights is required during the term of any such agreement. The law also authorizes the USEPA, DTSC, or SAFE-BIDCO to transfer to another Government authority any financial records included in an application for a loan, or concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan or loan guarantee or to collect on a defaulted loan or loan guarantee. No other transfer of your financial records to another Government authority will be permitted by the USEPA, DTSC, or SAFE-BIDCO except as required or permitted by law.

## **Information Practices Act of 1977**

All departments and agencies of the State of California shall enact and maintain a permanent privacy policy, in adherence with the Information Practices Act of 1977 (Civil Code Section 1798 et seq.), that includes, but not necessarily limited to, the following principles: (a) Personally identifiable information may only be obtained through lawful means; (b) The purposes for which personally identifiable data are collected shall be specified at or prior to the time of collection, and any subsequent use of the data shall be limited to and consistent with the fulfillment of those purposes previously specified; (c) Personal data may not be disclosed, made available, or otherwise used for a purpose other than those specified, except with the consent of the subject of the data, or as required by law or regulation; (d) Personal data collected shall be relevant to the purpose for which it is needed; and (e) The general means by which personal data is protected against loss, unauthorized access, use, modification, or disclosure shall be posted, unless the disclosure of those general means would compromise legitimate agency objectives or law enforcement purposes.

As a State entity, DTSC's records (and those of the loan recipients and contractors) are also subject to the Public Records Act. The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (Government Code § 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48.

**Equal Employment Opportunity** All loans shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." In addition, the Borrower will undertake good faith efforts in compliance with 40 CFR §35.6580 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and

Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The Borrower may be requested to submit a report of such efforts.

**Equal Credit Opportunity Act (15 U.S.C. 1691)** The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

**Nondiscrimination in Recipients of Federal Assistance (Civil Rights Act of 1964 Title VI, Federal Water Pollution Control Act of 1972 Section 13, Federal Rehabilitation Act of 1973 Section 504, Age Discrimination Act of 1975 Pub. L. 94-135):** These rules provide that no person in the United States shall, on the grounds of race, color; religion, national origin, sex, age or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)**

All loans will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to EPA.

**Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** Pursuant to CERCLA 104(G)(1), The Davis Bacon Act applies to construction, repair or alteration work funded in whole or in part with BCRLF loan funds. All construction contracts awarded by the recipient or subcontractors of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to USEPA and the DTSC.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)**

Where applicable, all loans in excess of \$100,000 for construction contracts and in excess of \$2500 for other loans that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and

provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous.



**Executive Order 11738—Environmental Protection (38 F.R. 25161) including the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended**

The Executive Order charges the USEPA with administering its programs in a manner that will result in effective enforcement of the Clean Air Act, the Federal Water Pollution Act and other environmental protection legislation. The USEPA must, therefore, impose conditions on some loans. By acknowledging receipt of this form and presenting the application, the principals of all small businesses borrowing \$100,000 or more in direct funds stipulate the following:

1. That any facility used, or to be used, by the subject firm is not cited on the USEPA list of Violating Facilities.
2. That subject firm will comply with all the requirements of Section 114 & 306 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) and section 508 of the Clean Water Act, and Section 308 of the Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements of the respective Acts, and all regulations and guidelines issued thereunder.
3. That the subject firm will notify the Lender of the receipt of any communication from the Director of the USEPA indicating that a facility utilized, or to be utilized, by subject firm is under consideration to be listed on the USEPA list of Violating Facilities.

**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Recipients who apply for a loan shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the loan recipient.

**USEPA Requirements for Drug-Free Workplace**

The Drug-Free Workplace Act of 1988 requires that all recipients receiving funds from any federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a recipient who is an individual, certify to the agency that his or her conduct of activity will be drug-free. This government-wide rule implements the statutory requirements. It directs that recipients take steps to provide a drug-free workplace in accordance with the Act.

**Debarment and Suspension (Executive Orders 12549 and 12689)**

A person who is debarred or suspended is excluded from federal financial and non financial assistance and benefits under federal programs and activities. No loans shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Borrowers shall provide the required certification regarding its exclusion status and that of its principal employees.

**Other Economic or Social Requirements**

Demonstration Cities and Metropolitan Development Act of 1966 (Pub. L. 89-754, as amended), Uniform Relocation and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, as amended), Section 504

of the Rehabilitation act of 1973 (Pub. L. 93-112, including executive orders 11914 & 11250), Section 192 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Pub. L. 100-590), Women's and Minority Business Enterprise, Executive Orders 11625, 12138, 12432.

---

Name

---

Date

---

Name

---

Date

**APPENDIX D**  
**Checklist, Personal Financial Statement, and Business Debt Schedule**  
**See Following Pages**



Linda S. Adams  
Secretary for  
Environmental Protection

## Department of Toxic Substances Control

Maureen F. Gorsen, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806

Arnold Schwarzenegger  
Governor

### **Brownfields Cleanup – Application Checklist**

Prospective applicants should first complete the site eligibility information in this application package and submit it along with any environmental assessments to the Department of Toxic Substances Control (DTSC) for review. The information will be used to determine site and project eligibility.

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Complete Site Eligibility application forms  |
| <input type="checkbox"/> | Environmental Studies (Environmental Phase 1 & Phase 2 Audits) if available. All information required as part of All Appropriate Inquiries, if applicable. |
| <input type="checkbox"/> | Remediation proposal including cost estimates.   |
| <input type="checkbox"/> | Description of planned reuse of site.  |

If the site is determined eligible, the applicant will complete the loan application information along with supporting financial documents. DTSC will schedule a meeting with the applicant to collect the loan application information and to discuss a plan to provide the public with an opportunity to review and comment on the proposed project. Please contact Tom Cota at (714) 484-5459 (or e-mail [TCota@dtsc.ca.gov](mailto:TCota@dtsc.ca.gov)) or e-mail [LoansGrants@dtsc.ca.gov](mailto:LoansGrants@dtsc.ca.gov) to submit questions and/or discuss your proposed project.

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | Submit \$500 loan application fee (non-refundable).                           |
| <input type="checkbox"/> | Complete loan application forms.  |
| <input type="checkbox"/> | Personal Financial Statement (each applicant) prepared within last 3 months.  |
| <input type="checkbox"/> | Individual Federal Tax Returns (three most recent years). All schedules.      |
| <input type="checkbox"/> | Business Financial Statements and Tax Returns (three most recent years).      |
| <input type="checkbox"/> | Interim Financial Statements, not more than 45 days old.                      |
| <input type="checkbox"/> | Articles of Incorporation and bylaws or Partnership Agreement, if applicable. |
| <input type="checkbox"/> | Business debt schedule.   |
| <input type="checkbox"/> | Statements Required by Law and Executive Order document.                      |



U.S. SMALL BUSINESS ADMINISTRATION

OMB APPROVAL NO. 3245-0188  
EXPIRATION DATE: 3/31/2008

# PERSONAL FINANCIAL STATEMENT

As of \_\_\_\_\_, \_\_\_\_\_

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

|                                     |                 |
|-------------------------------------|-----------------|
| Name                                | Business Phone  |
| Residence Address                   | Residence Phone |
| City, State, & Zip Code             |                 |
| Business Name of Applicant/Borrower |                 |

| ASSETS                                   |              | LIABILITIES                       |              |
|--|--------------|-----------------------------------|--------------|
|  | (Omit Cents) |                                   | (Omit Cents) |
| Cash on hand & in Banks                  | \$           | Accounts Payable                  | \$           |
| Savings Accounts                         | \$           | Notes Payable to Banks and Others | \$           |
| IRA or Other Retirement Account          | \$           | (Describe in Section 2)           |              |
| Accounts & Notes Receivable              | \$           | Installment Account (Auto)        | \$           |
| Life Insurance-Cash Surrender Value Only | \$           | Mo. Payments \$                   |              |
| (Complete Section 8)                     |              | Installment Account (Other)       | \$           |
| Stocks and Bonds                         | \$           | Mo. Payments \$                   |              |
| (Describe in Section 3)                  |              | Loan on Life Insurance            | \$           |
| Real Estate                              | \$           | Mortgages on Real Estate          | \$           |
| (Describe in Section 4)                  |              | (Describe in Section 4)           |              |
| Automobile-Present Value                 | \$           | Unpaid Taxes                      | \$           |
| Other Personal Property                  | \$           | (Describe in Section 6)           |              |
| (Describe in Section 5)                  |              | Other Liabilities                 | \$           |
| Other Assets                             | \$           | (Describe in Section 7)           |              |
| (Describe in Section 5)                  |              | Total Liabilities                 | \$           |
| Total                                    | \$           | Net Worth                         | \$           |
|  |              | Total                             | \$           |

| Section 1. Source of Income    |    | Contingent Liabilities           |    |
|--------------------------------|----|----------------------------------|----|
| Salary                         | \$ | As Endorser or Co-Maker          | \$ |
| Net Investment Income          | \$ | Legal Claims & Judgments         | \$ |
| Real Estate Income             | \$ | Provision for Federal Income Tax | \$ |
| Other Income (Describe below)* | \$ | Other Special Debt               | \$ |

Description of Other Income in Section 1:

|  |
|--|
|  |
|  |
|  |
|  |

\*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

| Name and Address of Noteholder(s) | Original Balance | Current Balance | Payment Amount | Frequency (monthly, etc.) | How Secured or Endorsed Type of Collateral |
|-----------------------------------|------------------|-----------------|----------------|---------------------------|--|
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |
|                                   |                  |                 |                |                           |  |

| Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed). |                    |      |                                    |                               |             |
|---|--------------------|------|------------------------------------|-------------------------------|-------------|
| Number of Shares  | Name of Securities | Cost | Market Value<br>Quotation/Exchange | Date of<br>Quotation/Exchange | Total Value |
|   |                    |      |                                    |                               |             |
|   |                    |      |                                    |                               |             |
|   |                    |      |                                    |                               |             |

  

| Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.) |            |            |            |
|--|------------|------------|------------|
|  | Property A | Property B | Property C |
| Type of Property   |            |            |            |
| Address  |            |            |            |
| Date Purchased   |            |            |            |
| Original Cost  |            |            |            |
| Present Market Value   |            |            |            |
| Name &<br>Address of Mortgage Holder   |            |            |            |
| Mortgage Account Number  |            |            |            |
| Mortgage Balance   |            |            |            |
| Amount of Payment per Month/Year   |            |            |            |
| Status of Mortgage   |            |            |            |

  

| Section 5. Other Personal Property and Other Assets. | (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency.) |
|--|---|
|  |   |

  

| Section 6. Unpaid Taxes. | (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.) |
|--------------------------|---|
|                          |   |

  

| Section 7. Other Liabilities. | (Describe in detail.) |
|-------------------------------|-----------------------|
|                               |                       |

  

| Section 8. Life Insurance Held. | (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries) |
|---------------------------------|---|
|                                 |   |

  

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

  

|                  |             |                               |
|------------------|-------------|-------------------------------|
| Signature: _____ | Date: _____ | Social Security Number: _____ |
| Signature: _____ | Date: _____ | Social Security Number: _____ |

  

**PLEASE NOTE:** The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

## BUSINESS DEBT SCHEDULE

Include the following information on all installment debts, notes, contracts, and mortgages. *Current balance must match the current balance sheet.* Include all capital leases shown on the balance sheet (if any). *Do not include accounts receivable and accounts payable.*

**Business Name** \_\_\_\_\_ **As of** \_\_\_\_\_, 200

| Name of Creditor | Original Amount | Original Date         | Current Balance | Interest Rate | Maturity Date         | Monthly Payment | Collateral | Current or Delinquent |
|------------------|-----------------|-----------------------|-----------------|---------------|-----------------------|-----------------|------------|-----------------------|
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 |                       |                 |               |                       |                 |            |                       |
|                  |                 | Total Current Balance |                 |               | Total Monthly Payment |                 |            |                       |

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX E

### Sample Letters

#### Commitment/Approval Letter

To be placed on DTSC letterhead

Month 00, 200x

Mr. /Ms XXX, President  
ABC Company  
1234 Main Street  
Area, CA 90000

Re: DTSC Loan #000000

Dear Mr. /Ms XXX:

The Department of Toxic Substances Control (DTSC) Brownfields Cleanup Revolving Loan Fund ("Lender") and SAFE-BIDCO ("Underwriter") are pleased to notify you that it has approved your request for a DTSC Loan ("Loan") for the cleanup of XXX as outlined below. The loan is subject to the terms and conditions set forth in this letter ("Commitment").

1. **Borrower:** ABC Company
2. **Loan Amount/Security:** The amount of the Loan shall be Two Million Five Hundred Thousand Dollars (\$2,500,000). The security for the Loan shall consist of (1) a first deed of trust on commercial property located at 1234 Main Street, Area, CA 90000.
3. **Term/Repayment:** The Term of the Loan shall commence on the date of the disbursement of the Loan (the "Closing Date") and shall terminate on a date 60 months thereafter (the "Maturity Date"), subject, however, to earlier termination pursuant to the terms of the Loan Documents. Payments on the Loan shall consist of monthly payments of principal and interest in the estimated amount of \$.00 (\$.00 annually) for XX months beginning on Month 00, 200x.
4. **Interest Rate:** Interest on the principal balance of the Loan outstanding from the date of funding shall be at a fixed annual rate of XXX percent (X.XXX%), and shall be computed on a 365 days per year basis and the actual number of days elapsed.
5. **Commitment Fee:** On the Closing date, Borrower shall pay to Underwriter a loan fee ("Loan Fee") of one and one-half percent (1.5%) of the Loan Amount.
6. **Loan Documents:** The Loan shall be made pursuant to the terms of a loan agreement ("Loan Agreement"), and promissory note ("Promissory Note"). Sample Loan Documents are available for your review upon your request. Lender's obligation to make the Loan shall be conditioned upon all Loan Documents being in final form and substance satisfactory to Lender in Lender's sole discretion.



7. **Terms of Commitment:** Unless the Loan has closed, this Commitment shall expire on Month 00, 200x
8. **Termination of Commitment:** Lender reserves the right to cancel this Commitment and terminate its obligations hereunder at any time prior to its expiration upon the occurrence of any of the following events:
- a. the failure of Borrower or any Guarantor to (1) comply with Lender's requests for information in connection with Lender's ongoing investigation of Borrower's business or credit, or (2) execute and deliver, in connection with the Loan, any documents deemed reasonably necessary and appropriate by Lender; or
  - b. the failure of Borrower or any Guarantor to disclose to Lender all information material to the making of the Loan and the security for the Loan, or the misrepresentation by Borrower of any material fact relating to any of the above or the business or financial condition of Borrower or of any Guarantor; or
  - c. any event, occurrence or circumstance which, in Lender's good faith opinion, would impair the ability of Borrower or Guarantor to perform under the terms of this Commitment or the Loan, including, but not limited to, any change deemed by Lender to be material, in the security for the Loan or in the business, assets, net worth, earnings, liquidity, or credit standing of Borrower or any Guarantor; or
  - d. the determination by Lender that the security for the Loan is inadequate or insufficient.
9. **Entire Agreement:** The Commitment supersedes any prior agreements, oral or written, between Lender and Borrower and any Guarantor and contains the entire agreement between Lender and Borrower and any Guarantor with respect to the terms on which the Loan will be made. No subsequent agreement, representation or promise made by any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.
10. **Indemnification:** Borrower agrees to indemnify and hold Lender harmless from and against any and all claims, damages, liabilities, expenses and fees (including attorneys' fees) which may be incurred by or asserted against Lender and which arise out of or relate to this Commitment.
11. **Conditions of Approval:**
- a. The unlimited personal guarantee(s) of Mr. XXX, Mrs. XXX, and Ms XXX; and
  - b. appraisal, Certification Statement, Resolution (if applicable); and
  - c. Phase I Environmental Site Assessment and/or VISTA Real Estate Environmental Transaction Report and Preliminary Title Report on commercial property located at 1234 Main Street, Area, CA; and on the property located at XXX;
  - d. any other documentation that may be required prior to loan closing.
12. **Reservation of Rights for Lender:** Lender reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, that may pertain to this commitment.
13. Please signify your acceptance of the above terms and conditions by signing the enclosed copy of this Commitment in the space provided below and returning the same to the DTSC, Post Office Box # 0000, Program Lender, CA 95401,

Attention: XXX XXXXX, DTSC Program, on or before ninety (90) calendar days from the date hereof, or this Commitment will expire and be of no further force or effect on Lender. Any extensions of the time in which you may accept this Commitment shall be made solely at Lender's option and must be in writing, signed by Lender.

Sincerely,

**LENDER: DTSC**

By: \_\_\_\_\_

XXXX XXXXX, Deputy Director

ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008

**BORROWER: ABC COMPANY**

By: \_\_\_\_\_

XXXXX, President

ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008

**APPENDIX E-1**  
Declination Letter

To be placed on DTSC letterhead

Month 00, 200x

Mr./Ms XXX, President  
ABC Company  
1234 Main Street  
Area, CA 90000

Re: DTSC Program Loan Request

Dear Mr./Ms XXX:

Thank you for your application dated Month 00, 200x for a DTSC Program loan. After review and consideration by loan staff, loan committee and the Director your loan request has been declined based on the following:

- Lack of ...
- Insufficient cash flow from current operations to support additional debt.

Before ABC Company applies for another DTSC Program loan, Loan staff would like to review the following:

- Historical financial statements showing sufficient operational cash flow from XXX and sale of XXX without reliance on XXX contract revenue.

If in the future these conditions can be met, you may resubmit your loan application. Any new application will be subject to the availability of funds and the DTSC's procedures and requirements in effect at that time.

We appreciate your continued interest in the DTSC Program. If you have any questions, please feel free to contact me at xxx-xxx-xxxx.

Sincerely,

Betty Jones  
Loan Committee Coordinator  
DTSC Program

**APPENDIX E-2**  
**Amendment Letter**

To be placed on DTSC letterhead

Month 00, 200x

Mr. /Ms XXX, President  
ABC Company  
1234 Main Street  
Area, CA 90000

Re: DTSC Loan #000000

Dear Mr. /Ms XXX:

Thank you for your credit application dated Month 00, 200x for a DTSC Program loan. After review and consideration by loan staff, Loan Committee and the Director your loan request has been amended based on the following:

- Requested Loan amount was reduced to \$ \_\_\_\_\_ from the original loan request of \$ \_\_\_\_\_, this was due to \_\_\_\_\_.
- Additional Guarantor support: Loan Committee requests that Mr. /Ms \_\_\_\_\_ be added as an additional guarantor based on \_\_\_\_\_.

If you concur with the above-mentioned changes to your loan application request, please sign this letter below and return it to the DTSC Program within five business days upon receipt of this letter. Please keep a copy of this letter for your records. The commitment letter, loan documents, closing and supporting items will reflect the amendments as decided upon by loan staff, Loan Committee and the Director.

Approval/Concurrence:

\_\_\_\_\_  
Mr. /Ms. XXX  
President

\_\_\_\_\_  
Date

We appreciate your continued interest in the DTSC program. If you have any questions regarding the changes to your loan request, please feel free to contact me at xxx-xxx-xxxx.

Sincerely,

Betty Jones  
Loan Committee Coordinator  
DTSC Program